

No.

3106

United States
Circuit Court of Appeals ⁶
For the Ninth Circuit.

FRANK BEYER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court, for the Southern District of Cal-
ifornia, Southern Division.

FILED

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F. D. MURKIN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiff in Error Frank Beyer:

EARL ROGERS, CHARLES SCHOLZ, MIL-
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Building, Los Angeles, California.

For Defendant in Error United States of America:

ROBERT O'CONNOR, Esq., United States At-
torney, and WILLIAM F. PALMER, Esq.,
Assistant United States Attorney, Federal
Building, Los Angeles, California.

*In the District Court of the United States for the
Southern District of California Southern Division*
UNITED STATES OF AMERICA,

Plaintiff,

v.

WARREN FABIAN, DAN MALONE, and FRANK
BEYER,

Defendants.

No. 1176, Criminal

Citation on Writ of Error.

UNITED STATES OF AMERICA, SOUTHERN
DISTRICT OF CALIFORNIA, SOUTHERN
DIVISION, ss.

To the United States of America, and to Albert
Schoonover, United States Attorney for the South-
ern District of California, Greeting:

You are hereby cited and admonished to be and ap-
pear before the United States Circuit Court of Appeals
for the Ninth Circuit, at San Francisco, California,
within thirty days from the date hereof, pursuant to a
Writ of Error filed in the clerk's office of the District
Court of the United States, for the Southern District
of California, Southern Division, wherein Frank Beyer
is plaintiff in error and you are the defendant in error,
to show cause, if any there by, why the judgment in
the said writ of error mentioned should not be cor-
rected and speedy justice should not be done to the
parties in that behalf.

Given under my hand, at Los Angeles, California, in
said district, this 19 day of June, 1917.

OSCAR A. TRIPPET,
United States District Judge, for the Southern District
of California.

[Endorsed]: No. 1176, Crim. In the United States District Court in and for the Southern District of California, Southern Division. United States of America, plaintiff, vs. Warren Fabian, Dan Malone and Frank Beyer, defendants. Citation on writ of error (Frank Beyer). Received copy of the within citation this 19 day of June, 1917. W. F. Palmer, Asst. U. S. Atty. Filed Jun. 19, 1917. Wm. M. Van Dyke, clerk; by Geo. W. Fenimore, deputy clerk. Earl Rogers, Charles Scholz & Milton M. Cohen, 403 California Building, phone Broadway 2626, Los Angeles, Cal., attorneys for defendants.

*In the District Court of the United States for the
Southern District of California Southern Division*

UNITED STATES OF AMERICA,

Plaintiff,

v.

WARREN FABIAN, DAN MALONE, and FRANK
BEYER,

Defendants.

No. 1176, Criminal

Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to the Honorable Judge of the District Court of the United States, for the Southern District of California, Southern Division, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in said District Court, before you, between Frank Beyer,

plaintiff in error, and the United States of America, defendant in error, a manifest error has happened to the great damage of said Frank Beyer, plaintiff in error, as by his complaint appears:

We being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid and all things concerning the same to the United States District Court of Appeals for the Ninth District, together with this Writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals, may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, the 19th day of June, 1917.

(Seal) WM. M. VAN DYKE,
Clerk of the United States District Court, Southern
District of California, Southern Division.

Allowed by:

OSCAR A. TRIPPET,

Judge.

[Endorsed]: No. 1176 Crim. In the United States District Court in and for the Southern District of California, Southern Division. United States of America,

plaintiff, vs. Warren Fabian, Dan Malone and Frank Beyer, defendants. Writ of error (Frank Beyer). Received copy of the within writ this 19 day of June, 1917. W. F. Palmer, Asst. U. S. Atty. Filed Jun. 19, 1917. Wm. M. Van Dyke, clerk; by Geo. W. Fenimore, deputy clerk. Earl Rogers, Charles Scholz & Milton M. Cohen, 403 California Building, phone Broadway 2626, Los Angeles, Cal., attorneys for defendants.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

At at stated term of said court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Southern Division of the Southern District of California, on the second Monday of January, in the year of our Lord one thousand nine hundred and sixteen.

The Grand Jurors of the United States of America, chosen, selected and sworn, within and for the Division and District aforesaid, on their oath present:

That Warren Fabian, Lawrence J. Chartran, Dan Malone and F. B. Beyer, whose full and true names are, and the full and true name of each is, other than as herein stated, to the Grand Jurors unknown, and various and sundry other persons whose names are to the Grand Jurors unknown and not capable by reason of lack of information on the part of the Grand Jurors of being named in this indictment, hereinafter in this indictment called defendants, heretofore, to-wit: on or about the 1st day of January, in the year of our Lord

one thousand nine hundred and sixteen, in the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, did wilfully, knowingly, unlawfully and feloniously conspire, combine, confederate and agree together, and among themselves, to commit an offense against the United States of America, to-wit: to violate that Act entitled "An Act to further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls and for other purposes," of June 25, 1910 (36 Stats. at Large 825), and particularly section two of said act, in the following manner and particulars:

That is to say, that it was the purpose, object and agreement of the said defendants, and each of them, that they would knowingly transport and cause to be transported, in foreign commerce from the City of Los Angeles, State of California, and from various and sundry other cities in the United States of America, the names of said cities are to the Grand Jurors unknown, to the town of Mexicali, in the Republic of Mexico, certain women and girls, the names of said women and girls other than as herein stated in this indictment are to the Grand Jurors unknown, for the purpose of debauchery as hereinafter in this indictment stated and described, whereby said women and girls would be transported in foreign commerce for the purpose of debauchery, to-wit: for the purpose of acting as entertainers and chorus girls, that is to say, singing and dancing in a certain building in Mexicali, in the Republic of Mexico, which said building would be known as the Owl Cafe, and the ground floor of said

building where said women and girls would act as entertainers and chorus girls, as aforesaid, would consist of one large room with a certain space set aside for a dance hall and certain space set aside for a gambling hall and a certain space set aside for a bar where intoxicating liquors would be sold, and a certain space set aside for tables and chairs where intoxicating liquors would be drunk, and leading off from said ground floor of said building there would be two hallways on either side of which said hallways there would be small rooms commonly termed cribs, where various and sundry other women and girls, whose names are to the grand jurors unknown, would engage in the practice of prostitution, that is to say, would engage in sexual intercourse with men other than their husbands, and it would be a part of the duties of said women and girls aforesaid whom the said defendants so conspired to transport as aforesaid as entertainers in said Owl Cafe to sell intoxicating liquors to any and all persons who might desire to buy them, and said women and girls would receive a percentage of forty (40%) percent on all such intoxicating liquors which they might sell, and to dance with any and all persons who might want to dance with said women and girls, and the said women and girls so conspired to be transported as aforesaid, were to entertain and perform as such chorus girls in that part of said building set apart as aforesaid for the bar and gambling tables, and to there perform and entertain in the presence of any and all persons who should be in said place, and said girls were to solicit persons in said place. other than the inmates thereof, to buy and drink

liquors with the said chorus girls, such liquors to be drunk at tables provided in said place for said purpose, and said girls were to so solicit any and all persons coming into said place to so buy and drink liquor, and said solicitation was to be in the presence of any and all persons there at the time of said solicitation, and in the presence of said women then and there engaged in prostitution while said prostitutes were in said part of said place; and the said prostitutes would solicit in the place where said chorus girls were to be, and in their presence, men to go with said prostitutes to said cribs; and said prostitutes and inmates of said place would frequent said compartment thereof in which said chorus girls were to be and entertain, and there would drink intoxicating liquors and procure sales of intoxicating liquors to men congregated there, all in the place where said chorus girls were to so entertain and solicit and stay; and said place would be frequented at all hours of the day and night by men of low character who would congregate there, for the purpose of indulgence in intoxicating liquors; and dancing, and for the purpose of prostitution; and said chorus girls were to occupy said place and be exposed at all times when in the performance of their said duties there to the company and contact of all said men, and all said prostitutes who would be there congregated.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of the aforesaid unlawful conspiracy, combination, confederation and agreement, and to effect and accomplish the objects and purpose thereof, the said Dan Malone, on or about the 20th day

of May, 1916, in the City of Los Angeles, State of California, did employ one Viola Davenport, to work as entertainer and chorus girl in the Owl Cafe at Mexicali, in the Republic of Mexico.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of the aforesaid unlawful conspiracy, combination, confederation and agreement, and to effect and accomplish the objects and purposes thereof, the said Warren Fabian, on or about the 13th day of April, 1916, did persuade, induce and entice one Lela Cavill to go from the City of Los Angeles, State of California, to the town of Mexicali, in the Republic of Mexico.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of the aforesaid unlawful conspiracy, combination, confederation and agreement, and to effect and accomplish the objects and purposes thereof, the said Dan Malone, on or about the 18th day of May, 1916, in the City of Los Angeles, did induce, entice and persuade one Alma Korst to go from the City of Los Angeles, State of California, to the town of Mexicali, in the Republic of Mexico, for the purpose of engaging in chorus work in the Owl Cafe in Mexicali, Mexico.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of the aforesaid unlawful conspiracy, combination, confederation and agreement, and to effect and accomplish the objects and purposes thereof, the said Warren Fabian, on or about the 24th

day of March, 1916, in the city of Los Angeles, did cause to be sent and transmitted by the Western Union Telegraph Company the following telegram:

“CALEXICO CAL 405 P M MCH 24-16
MISSES GRACE CLAIRE AND FAE
CARE RAYMOND TEEL E CO OR GEN DELY
BISBEE AZ
WIRED TICKETS GENERAL DELIVERY
COME IMMEDIATELY VIRGINIA HOTEL CA-
LEXICO ANSWER.

MRS. W. FABIAN.”

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of the aforesaid unlawful conspiracy, combination, confederation and agreement, and to effect and accomplish the objects and purposes thereof, the said Warren Fabian, on or about the 16th day of March, 1916, did induce, persuade and entice one Alma Person to go from the City of Los Angeles, State of California, to the town of Calexico, State of California.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of the aforesaid unlawful conspiracy, combination, confederation and agreement, and to effect and accomplish the objects and purposes thereof, the said Warren Fabian, on or about the 16th day of March, 1916, did induce, persuade and entice one Anna Gregory to go from the City of Los Angeles, State of California, to the town of Calexico, State of California.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of the aforesaid unlawful conspiracy, combination, confederation and agreement, and to effect and accomplish the objects and purposes thereof, the said Warren Fabian, on or about the 25th day of March, 1916, did induce, persuade and entice one Vivian de la Mar to go from the City of Los Angeles, State of California, to the town of Calexico, in the State of California.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of the aforesaid unlawful conspiracy, combination, confederation and agreement, and to effect and accomplish the objects and purposes thereof, the said Warren Fabian on or about the 23rd day of March, 1916, in the City of Los Angeles, did give to one Lela Caville the sum of \$10.00 for the transportation of the said Lela Caville from the City of Los Angeles, State of California, to the town of Calexico, State of California.

The Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of the aforesaid unlawful conspiracy, combination, confederation and agreement, and to effect and accomplish the objects and purposes thereof, the said Warren Fabian, on or about the 25th day of March, 1916, in the City of Los Angeles, did give to one Vivian de la Mar the sum of \$10.00 for the transportation of the said Vivian de la Mar from the City of Los Angeles, State of California, to the town of Calexico, State of California.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That in furtherance of the aforesaid unlawful conspiracy, combination, confederation and agreement, and to effect and accomplish the objects and purposes thereof, the said Lawrence Chartram, on or about the 1st day of March, 1916, in the City of Los Angeles, did solicit one Daisy North to go from the City of Los Angeles, State of California, to the town of Calexico, in the State of California.

Contrary to the form of the Statute of the United States in such case made and provided, and against the peace and dignity of the said United States.

ALBERT SCHOONOVER

United States Attorney.

ROBERT O'CONNOR

Assistant United States Attorney.

[Endorsed]: No. 1176 Crim. United States District Court, Southern District of California. The United States of America vs. Warren Fabian, Lawrence J. Chartran, Dan Malone & F. B. Beyer. Indictment for violation of section 37, Federal Penal Code. Conspiracy to violate the Mann White Slave Act. A true bill. Gail B. Johnson, foreman. Presented and filed in open court, this 20th day of December, A. D. 1916. Wm. M. Van Dyke, clerk; by Geo. W. Fenimore, deputy clerk.

*In the District Court of the United States in and for
the Southern District of California, Southern
Division.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WARREN FABIAN, LAWRENCE J. CHARTRAN,
DAN MALONE and G. B. Beyer,

Defendants.

Demurrer to Indictment.

Come now the defendants and demur to the indictment herein upon the following grounds:

I.

That said indictment does not state facts sufficient to constitute a public offense, or any offense or crime against the laws or statutes of the United States of America.

II.

That said indictment does not substantially conform to or comply with the requirements of Section 950 of the Penal Code of the State of California, the state in which this Court is holden.

III.

That said indictment does not substantially conform to or comply with the requirements of Section 951 of the said last mentioned code.

IV.

That said indictment does not substantially conform to or comply with the requirements of Section 952 of the said last mentioned code.

V.

That said indictment is not direct or certain, as respects the particular circumstances of the offense attempted to be charged, and that said circumstances are necessary to be alleged in order to constitute a complete offense.

That said indictment is not direct or certain sufficiently to inform the defendants of the particular circumstances of the offense with which they are attempted to be charged.

That said uncertainty consists in the following matters:

That it is not alleged in the said indictment, that the defendants conspired to transport or cause to be transported, or to aid or assist in obtaining transportation for, or in transporting, in foreign commerce, from the City of Los Angeles, State of California, or elsewhere, to the town of Mexicali, in the Republic of Mexico, or elsewhere, certain women or girls, for the purpose of debauchery within the purview of the statute mentioned in said indictment.

It is nowhere alleged in said indictment that the women or girls mentioned in said indictment were transported for, or for the purposes of, prostitution, debauchery, or other immoral purpose of the same kind, or that the said girls, as a matter of fact, did commit any such acts or things.

It is not alleged in said indictment that the defendants conspired to transport or cause to be transported, or to aid or assist in obtaining transportation for, or in transporting, in foreign commerce, any women or girls, for any sexually immoral purpose, or that any

acts specified in said indictment were by defendants intended to result in the commission of said immoral acts in the statute named, prohibited, or set forth.

It is not alleged in said indictment that any of the immoral acts attempted to be set forth as purposes for which the said women or girls were transported or caused to be transported were by defendants intended to conduce or lead to sexual immorality, prostitution, debauchery, or other immoral acts of the same kind, or that said acts were calculated by defendants to lead or cause said women or girls to commit said immoral acts of said kind.

There is no allegation in said indictment of the commission of any sexually immoral acts on the part of any women or girls transported or caused to be transported by defendants.

VI.

Said indictment further is uncertain and insufficient in this, that the specific acts set forth in said indictment, as respects each defendant, or the overt acts alleged as respects each defendant, are not alleged to have been intended by the defendants to, or calculated to, conduce to or cause any of the immoral acts prohibited by the statute mentioned, or referred to in the statute mentioned, as the purpose for which said women or girls were transported, or caused to be transported.

VII.

Said indictment further is uncertain and insufficient in that it is nowhere alleged in said indictment that defendants, or any of them, conspired to transport or cause to be transported, or to aid or assist in obtaining

transportation in foreign commerce of any women or girls who did commit, or were by defendants intended to commit, or to attempt or by defendants caused, enticed, or induced to commit or to attempt to commit, or by any person caused, enticed or induced to commit, or to attempt to commit, any acts of sexual immorality whatever, or any acts of prostitution, debauchery or other immoral acts of the same kind.

VIII.

The defendant, Beyer, particularly demurs to said indictment upon the ground that it is not alleged in said indictment that any overt act, in pursuance of any conspiracy, combination, confederacy, or agreement was by him done at any time.

IX.

That the grand jury by which the indictment was found had no legal authority to inquire into the offense charged.

X.

That the indictment shows upon its face that all overt acts alleged to have been committed in pursuance of the alleged conspiracy are alleged to have been committed after the return of said indictment.

XI.

That the said indictment was filed on the 20th day of December, 1916, and is alleged to have been found and returned on the second day of January, 1916, and the conspiracy is alleged to have been found on the first day of January, 1916, namely, one day before the finding of the indictment, and the overt acts committed in pursuance thereof are alleged to have been performed

at various dates later than the finding and return of said indictment, to-wit, in January, 1916.

EARL ROGERS and
MILTON M. COHEN,
Attorneys for Defendants.

I hereby certify that the foregoing demurrer is by me believed to be well founded in law, and properly interposed as a matter of law, and that it is not made for the purpose of delay, or for any other purpose than to present to the Court a legitimate point of law, which I believe to be well taken.

EARL ROGERS.

[Endorsed]: No. 1176 Crim. In the United States District Court in and for the Southern District of California, Southern Division. The United States of America, plaintiff, vs. Warren Fabian *et al.*, defendant. Demurrer to indictment. Filed Jan. 11, 1917. Wm. M. Van Dyke, clerk; Geo. W. Fenimore, deputy. Earl Rogers and M. M. Cohen, 403 California Building. Phones (Broadway 2626. F 2172. Los Angeles, Cal. Attorneys for Defendants.

At a stated Term, to wit the January Term, A. D. 1917 of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court Room thereof, in the City of Los Angeles, on Thursday, the Eleventh day of January, in the year of our Lord One Thousand Nine Hundred and Seventeen:

Present:

The Honorable Oscar A. Trippet, District Judge.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WARREN FABIAN, LAWRENCE J. CHARTRAN,
DAN MALONE, and F. B. BEYER.

Defendants.

No. 1176 Crim. S. D.

This cause coming on at this time for the arraignments of defendants and for the entry of their pleas; Robert O'Connor, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present on bail, with their counsel Earl Rogers, Esq.; and defendants having been called and severally arraigned, having stated that their true names are, respectively, Warren Fabian, Lawrence J. Chartran, Dan Malone and F. B. Beyer, and having waived the reading of the indictment; and a demurrer to the indictment and a motion to quash said indictment having been presented on behalf of defendant; and said motion to quash the indictment and said demurrer to said indictment having been argued, in support thereof, by Earl Rogers, Esq., of counsel for defendants; it is now by the Court ordered that defendants' said motion to quash the indictment be, and the same hereby is denied, and that defendants' demurrer to the indictment be, and the same hereby is overruled, to which ruling of the Court, on motion of defendants and by direction of the Court, exceptions are hereby noted herein on behalf of each of the defendants; and defendants being thereupon required to plead to the indictment, and having severally pleaded not guilty as charged therein, which pleas are now by order of the Court entered

herein; it is, on motion of Robert O'Connor, Esq., Assistant U. S. Attorney, of counsel for the United States, ordered that this cause be, and the same hereby is set down on Tuesday, the 1st day of May, 1917, at 10 o'clock A. M., for trial of defendants before the Court and a jury to be impanelled.

At a stated Term, to wit: the January Term, A. D. 1917, of the District Court of the United States of California, Southern Division, held at the Court Room thereof, in the City of Los Angeles on Tuesday, the First day of May, in the year of our Lord One Thousand Nine Hundred and Seventeen.

Present:

The Honorable Oscar A. Trippet, District Judge.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WARREN FABIAN, et al.,

Defendants.

No. 1176 Crim. S. D.

This cause coming on this day for the trial of all the defendants before the court and a jury to be impanelled; Wm. F. Palmer, Esq., and Gordon Lawson, Esq., Assistant U. S. Attorneys, appearing as counsel for the United States; Defendants Warren Fabian, Lawrence J. Chartran and F. B. Beyer, being present on bail, with their counsel, Earl Rogers, Esq., and M. M. Cohen, Esq., Defendant Dan Malone being absent at this time; W. C. Wren being present as shorthand reporter of the testimony and proceedings, and acting as such; and the court having ordered that the trial proceed and that a jury be impanelled herein;

and the following twelve (12) petit jurors having been duly drawn, called and sworn on voir dire, to wit: John A. Farnsworth, Henry Y. Stanley, Charles O. Alkire, Frederick F. Parrish, L. N. Stott, Thomas E. Newlin, Frank N. Rust, B. E. Williams, Charles J. Nimmer, Frank C. Winter, George Carson Jr., and Samuel Sheppard; and attention having been called to the fact that one of the defendants, to wit: defendant Dan Malone, is not present in court; and the court having admonished the jurors not to permit other persons to talk to them about this case or anything connected with it, and not themselves to speak to other persons or to each other about this case or anything connected with it during a recess which the court is about to take, and court thereupon at the hour of 10:20 o'clock, A. M., having taken a recess pending efforts to secure the attendance of defendant Dan Malone; and now at the hour of 10:27 o'clock, A. M., court having reconvened; and counsel and shorthand reporter being present as before; and all of the defendants now being present in court, on bail; and the twelve jurors sworn on voir dire being present in the jury box; now, pursuant to the stipulations of counsel for the Government and counsel for defendants, in open court, it is ordered that all proceedings herein this day prior to the presence in court of defendant Dan Malone shall be deemed to have been entirely regular and not subject to exception; and the examination of the jurors having been commenced, and during said examination on motion of Earl Rogers, Esq., of counsel for defendants, on behalf of defendants, and by direction of the court, the exceptions having been noted

herein to the method of exercising challenges of jurors herein; now, on motion of Earl Rogers, Esq., of counsel for defendants, it is ordered that Charles Scholze, and he hereby is associated with Earl Rogers, Esq., and M. M. Cohen, Esq., as counsel for defendants; and said twelve jurors in the box having been examined by the court and by counsel for the Government and by counsel for defendants; and L. N. Scott having been challenged for cause by the Government which challenge is not resisted, and the juror excused; and Frank N. Rust having been challenged for cause by defendants, which challenge is not resisted and the juror excused; and the remaining ten jurors having been passed for cause; and Charles J. Nimmer having been challenged peremptorily by the Government and excused; and Thomas E. Newlin having been challenged peremptorily by defendants and excused; and Henry Y. Stanley having been challenged peremptorily by defendants and excused; and George Carson Jr., having been challenged peremptorily by the Government and excused; and Samuel Sheppard and B. E. Williams having been challenged peremptorily by defendants and excused; and the remaining four jurors, to wit: Jurors John A. Farnsworth, and Charles O. Alkire, Frederick F. Parrish and Frank C. Winter having been accepted by counsel for the Government and by counsel for defendants and duly sworn as jurors to try this cause; and the court having admonished the jurors sworn to try this cause that, during this trial, they are not to permit other persons to speak to them, nor themselves speak to other persons about this case, or anything connected with this case,

and that, until said case is finally given them for consideration under the instructions of the court, they are not to speak to each other about this case, or anything therewith connected; and the court thereupon, at the hour of 11:30 o'clock, A. M., having taken a recess for eleven minutes; and now, at the hour of 11:41 o'clock, A. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; and counsel for the respective parties having stipulated that the jurors are present, and said jurors being present in court; and, in place of the eight jurors excused, the following petit jurors having been drawn, called, sworn on voir dire, examined by the court and by counsel for the Government and by counsel for defendants and passed for cause, to wit: Howard S. Dudley, I. B. Newton, Alonzo H. Potter, Fred C. Adams, A. A. Allen, Lynn C. Standford, Harry H. Baskerville, and Perry Whiting; and Perry Whiting having been challenged peremptorily by the Government and excused; and I. B. Newton having been challenged peremptorily by defendants and excused; and Harry H. Baskerville having been challenged peremptorily by defendants and excused; and jurors Howard S. Dudley, Alonzo H. Potter, Fred C. Adams, A. A. Allen and Lynn C. Standford having been accepted by counsel for the Government and by counsel for defendants and duly sworn as jurors to try this cause; and the court having admonished the jurors that, during this trial, they are not to permit other persons to speak to them, nor themselves speak to other persons about this case, or anything connected with it, and that, until said case is given them for considera-

tion under the instructions of the court they are not to speak to each other about this case, or anything therewith connected; and court thereupon at the hour of 12:16 o'clock P. M., having taken a recess until the hour of 2 o'clock, P. M., of this day, until which time the jurors sworn to try this case and the remaining petit jurors whose names have not been drawn are excused;

And now, at the hour of 2 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; counsel for the respective parties having stipulated that the jurors sworn to try this case are present, and said jurors being present in court; and in the place of jurors Whiting, Newton and Baskerville, who were excused, the following petit jurors, to wit: Eugene Bassett, Charles E. Love and Gervaise Purcell, having been duly drawn, called, sworn on voir dire, examined by the court and by counsel for the Government and by counsel for defendants and passed for cause; and Eugene Bassett having been challenged peremptorily by defendants and excused; and Charles E. Love and Gervaise Purcell having been accepted by counsel for the Government and by counsel for defendants and duly sworn as jurors to try this cause; and, in place of the juror Bassett, Robert C. Conant, a petit juror, having been duly drawn, called, sworn on voir dire, examined by the court and by counsel for the Government and by counsel for defendants and passed for cause, and said juror Conant, having thereupon been challenged peremptorily by defendants and excused; and William W. Widney, a petit juror, having been

duly drawn, called, sworn on voir dire, and examined by the court and by counsel for the Government and by counsel for defendants, and said juror, Widney, having been challenged for cause by defendants, which challenge is resisted by the Government and sustained by the court, and the juror excused; and John J. Byrne, a petit juror, having been duly drawn, called, sworn on voir dire, examined by the court and by counsel for the Government and by counsel for defendants and passed for cause; and said juror John J. Byrne having been peremptorily challenged by the Government and excused; and the panel of petit jurors having been exhausted, and there being only eleven (11) jurors in the box; it is by the court ordered that a special venire issue from the Clerk's office herein for five jurors to be summoned from the bystanders, said venire to be returnable at the hour of 3:30 o'clock, P. M., of this day; and the court having admonished the jurors sworn to try this cause that, during this trial, they are not to permit other persons to speak to them, nor themselves speak to other persons, about this case, or anything connected with it, and that, until this case is given them for consideration, under the instructions of the court, they are not to speak to each other about this case, or anything connected therewith; and court thereupon, at the hour of 2:50 o'clock, P. M., having taken a recess until the hour of 3:30 o'clock P. M., of this day, until which time the jurors are excused; and now, at the hour of 3:30 o'clock P. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; and the eleven jurors now sworn to try this case being present

in court; and the United States Marshal having made return of the Special Venire issued herein this day, as follows, to wit: "In obedience to the within venire I have summoned the following: E. Sidney Phelps, R. N. Morphis, T. Ludlow, C. W. Green, W. H. Collins.—C. T. Walton United States Marshal by D. S. Bassett Deputy U. S. Marshal This 1st day of May 1917."; and the roll of said special veniremen having been called, and all being present and their names having been put in the box; and C. W. Green, a special venireman, having been duly drawn, called, sworn on voir dire, examined by the court and by counsel for the Government, and by counsel for defendants, and challenged for cause by defendants, which challenge is sustained by the court and the special venireman excused; and R. N. Morphis, a special venireman, having been duly drawn, called, sworn on voir dire, examined by the court and by counsel for the Government and by counsel for defendants and passed for a cause, and having thereupon been challenged peremptorily by the Government and excused; and W. H. Collins, a special venireman, having been duly drawn, called, sworn on voir dire, examined by the court and by counsel for the Government and by counsel for the defendants and passed for cause, and having thereupon been challenged for cause by defendants and excused; and T. Ludlow, a special venireman, having been duly drawn, called, on voir, dire, examined by the court and by counsel for the Government and by counsel for defendants and passed for cause, and having thereupon been challenged peremptorily by defendants and excused; and E. Sidney Phelps, a special venireman,

having been duly drawn, called, sworn on voir dire, examined by the court and by counsel for the Government and by counsel for defendant and passed for cause and accepted by the counsel for the Government and by counsel for defendants and duly sworn as a juror to try this cause; and the impanelment of the jury being completed, and jury as so impanelled and sworn consisted of the following jurors, to wit:

Jury:

- | | |
|--------------------------|------------------------|
| 1. John A. Farnsworth, | 5. Howard S. Dudley, |
| 2. A. A. Allen, | 6. Fred C. Adams, |
| 3. Charles O. Alkire, | 7. Charles E. Love. |
| 4. Frederick F. Parrish, | 8. E. Sidney Phelps, |
| 9. Alonzo H. Potter, | 11. Lynn C. Standford, |
| 10. Frank C. Winter, | 12. Gervaise Purcell; |

It is ordered that the four special venireman present this day pursuant to summons and excused be paid their lawful fees for attendance by the U. S. Marshal for this District; and the indictment having been read to the jury, and the pleas of not guilty of all of the defendants having been announced to the jury by the Clerk; and the court having admonished the jurors that, during this trial, they are not to permit other persons to speak to them nor themselves speak to other persons, about this case, or anything connected with this case, and that, until this case is given them for consideration, under the instructions of the court, they are not to speak to each other about this case, or anything therewith connected; it is, at the hour of 4:50 o'clock, P. M., ordered that this cause be, and the same hereby is continued for further trial until Wednesday,

the second day of May, 1917, at 10 o'clock, A. M., until which time the jurors are excused.

At a stated term, to wit: the January Term, A. D., 1917, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court Room thereof, in the City of Los Angeles, on Wednesday, the Second day of May in the year of our Lord One Thousand Nine Hundred and Seventeen;

Present:

The Honorable Oscar A. Trippet, District Judge.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WARREN FABIAN, et al.,

Defendants.

No. 1176 Crim. S. D.

This cause coming on this day for the further trial of all the defendants before the court and a jury heretofore duly impanelled herein; Wm. F. Palmer, Esq., and Gordon Lawson, Esq., Assistant United States Attorneys, appearing as counsel for the United States; each and all of the defendants being present on bail, with their counsel, Earl Rogers, Esq., M. M. Cohen, Esq., and Charles Scholz, Esq.; and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present in court; W. C. Wren being present as shorthand reporter of the testimony and proceedings, and acting as such and Earl Rogers, Esq., of counsel for defendants, having

moved that this cause be dismissed, and having objected to the introduction of testimony under the indictment herein; and said motion and objection having been argued, in support thereof, by Earl Rogers, Esq., of counsel for defendants, and in opposition thereto by Wm. F. Palmer, Esq., Assistant U. S. Attorney, of counsel for the United States; and the minutes of this court for July 24th, 1916, relating to the impanelment of the U. S. Grand Jury for the July Term, 1916, of this court, and the minutes of this court for December 20th, 1916, relating to the presentation of the indictment and order for filing same, etc., in this cause, having been offered and admitted in evidence on behalf of the Government; it is now by the court ordered that defendants' motion to dismiss this cause be, and the same hereby is denied, and it is further ordered that defendants' objection to the introduction of testimony under the indictment herein be, and the same hereby is overruled; to which rulings, on motion of counsel for defendants, and by direction of court, and exception is hereby noted and Wm. F. Palmer, Esq., Assistant U. S. Attorney, of counsel for the United States, having moved to amend the indictment in this cause by striking out the word "January" in the first paragraph of said indictment, and inserting in lieu thereof the word "July," it is by the court ordered that said motion to amend the indictment herein be, and the same hereby is denied; and Wm. F. Palmer, Esq., Assistant U. S. Attorney, of counsel for the United States, having made a statement to the jury of what the Government expects to prove; and Earl Rogers, Esq., of counsel for defendants, having made a state-

ment to the jury of what defendants expect to prove in their defense; and Sally Margaret Claxton having been called and sworn as a witness on behalf of the United States and having given her testimony; and the court having given the jury the usual admonition; and court thereupon, at the hour of 11:15 o'clock, A. M., having taken a recess for twelve minutes; and now, at the hour of 11:27 o'clock, A. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; and counsel for the respective parties having stipulated that the jury is present, and all the said jurors being present in court; and Sally Margaret Claxton, a witness on behalf of the United States, having again taken the stand for further examination, and having given her testimony; and the court having given the jury the usual admonition; the court thereupon, at the hour of 12:01 o'clock, P. M., having taken a recess until the hour of 2 o'clock, P. M., of this day;

And now, at the hour of 2 o'clock, P. M., court having reconvened; and defendants and counsel being present as before; A. S. Custer and W. C. Wren being present as shorthand reporters of the testimony and the proceedings, and acting as such; and counsel for the respective parties having stipulated that the jury is present, and all the jurors being present in the court; and the question as to the admissibility of certain testimony having been argued, on behalf of defendants, by Earl Rogers, Esq., of counsel for defendants; and Sally Margaret Claxton, a witness on behalf of the United States having again taken the stand for further examination, and having given her testimony; and, in

connection with the testimony of said witness, defendant having offered an exhibit for identification, which is for identification marked with certain exhibit designations, to wit: Deft. Ex. A, Blank theatrical contract of Owl Cafe; and, also in connection with the testimony of said witness, the Government having offered for identification an exhibit, which is for identification marked with certain exhibit designations, to wit: Govt. Ex. 1, Blank theatrical contract of Owl Cafe, with certain writing on the back of same; and thereafter Deft. Ex. A having been admitted in evidence on behalf of defendant, and Govt. Ex. 1 having been admitted in evidence on behalf of the Government; and the court having given the jury the usual admonition; and court thereupon, at the hour of 3:30 o'clock, P. M., having taken a recess for seven minutes; and now, at the hour of 3:37 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and counsel for the respective parties having stipulated that the jury is present, and all of said jurors being present in court; and Sally Margaret Claxton, a witness on behalf of the United States, having again taken the stand for further examination, and having given her testimony; and C. F. Willard having been called and sworn as a witness on behalf of the United States, and having testified, and having been withdrawn temporarily; and Mrs. Warren Fabian having been called as a witness on behalf of the United States, and Earl Rogers, Esq., of counsel for defendants, having objected to the swearing of Mrs. Warren Fabian as a witness herein on behalf of the United States, which objection is sustain by the Court and said

witness Mrs. Warren Fabian withdrawn without having been sworn or given testimony herein; and Alma Person having been called and sworn as a witness on behalf of the United States, and having given her testimony; now, pursuant to stipulation of counsel for the respective parties, in open Court, it is ordered that all rulings herein adverse to defendants shall be deemed to have been accepted to; and the Court having given the jury the usual admonition; thereupon, at the hour of 4:52 o'clock P. M., it is ordered that this cause be, and the same hereby is continued for further trial until Thursday, the 3rd day of May, 1917, at 10 o'clock, A. M., until which time the jurors are excused.

At a stated term, to wit: the January Term, A. D., 1917, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court Room thereof, in the City of Los Angeles, on Thursday, the Third day of May, in the year of our Lord One Thousand Nine Hundred and Seventeen;

Present:

The Honorable Oscar A. Trippet, District Judge.

THE UNITED STATES OF AMERICA,

Plaintiffs, :

vs.

WARREN FABIAN, et al.,

Defendants.

No. 1176 Crim. S. D.

This cause coming on this day for the further trial of all the defendants before the court and a jury to

be impanelled; Wm. F. Palmer, Esq., and Gordon Lawson, Esq., Assistant U. S. Attorneys, appearing as counsel for the United States; defendants Warren Fabian, Lawrence J. Chartran and F. B. Beyer being present on bail, with their counsel, Earl Rogers, Esq., M. M. Cohen, Esq., and Charles Scholtz, Esq.; and defendant Dan Malone being absent at this time; W. C. Wren and A. S. Custer being present as shorthand reporters of the testimony and proceedings, and acting as such; now, on account of the absence of defendant Malone, this cause is not called for said further trial, but passed for the same until the hour of 10:40 o'clock, A. M., of this day; and it is ordered that Dr. E. H. Garrett, in company with defendants' counsel, visit said defendant Dan Malone, with a view of ascertaining his physical condition; and it is further ordered, on motion of Wm. F. Palmer, Esq., Assistant U. S. Attorney, of counsel for the United States, that an *attachement* issue forthwith to Mrs. Grace Covert, a defaulting witness on behalf of the United States; and court, at the hour of 10:10 o'clock, A. M., having taken a recess for 37 minutes; and now, at the hour of 10:47 o'clock, A. M., court having reconvened; and counsel and shorthand reporters being present as before; and all of the defendants except defendant Dan Malone being present on bail; and counsel for the respective parties having stipulated that the jury is present, and all the said jurors being present in court; and M. M. Cohen, Esq., of counsel for defendants, having made a statement to the court as to the physical condition of defendant Dan Malone; it is by the court ordered that this cause be not called at this

time for the further trial of defendants, but continued until the hour of 1 o'clock, P. M., of this day, to be at that time called for said trial; and court thereupon, at the hour of 10:50 o'clock, A. M., having taken a recess until the hour of 1 o'clock, P. M., of this day; and now, at the hour of 1 o'clock, P. M., court having reconvened; and counsel and shorthand reporters being present as before; and each and all of the defendants being now present in court; and counsel for the respective parties having stipulated that the jury is present, and all of said jurors being present in court; and the court having ordered that the trial proceed; and Alma Person, a witness on behalf of the United States, having again taken the stand for further examination, and having given her testimony; and Mrs. Grace Covert, a witness on behalf of the United States, having been called and sworn and having given her testimony; and, in connection with the testimony of said witness, the Government having offered, for identification, a telegram, signed Mrs. W. Fabian, which is for identification marked Pl. Ex. 2.; and, also in connection with the testimony of said witness, the Government having offered an exhibit, which is admitted in evidence in its behalf, to wit: Pl. Ex. 3, Theatrical contract of Grace Claire; and, also in connection with the testimony of said witness, defendants having offered an exhibit, which is admitted in evidence in their behalf, to wit: Deft. Ex. B, Envelope and letter to Mrs. Grace Fabian, and there having also been offered and admitted, Govt. Ex. C., Telegram, "Claire and Fae" to Mrs. Fabian, and the court having given the jury the usual admonition; this cause there-

upon, at the hour of 2:10 o'clock, P. M., is passed temporarily for further trial.

* * * * *

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WARREN FABIAN, et al.,

Defendants,

No. 1176 Crim. S. D.

This cause having been again called at this time for the further trial of all the defendants before the Court and a jury heretofore duly impanelled herein; Wm. F. Palmer, Esq., and Gordon Lawson, Esq., Assistant U. S. Attorneys, appearing as counsel for the United States; each and all of the defendants being present on bail, with their counsel, Earl Rogers, Esq., M. M. Cohen, Esq., and Charles Scholtz, Esq.; W. C. Wren and A. S. Custer being present as shorthand reporters of the testimony and proceedings, and acting as such; and counsel for the respective parties having stipulated that the jury is present, and all of the jurors being present in Court; and Mrs. Grace Covert, a witness on behalf of the United States, having again taken the stand for further examination, and having given her testimony; it is, on motion of Wm. F. Palmer, Esq., Assistant U. S. Attorney, of counsel for the United States, ordered that the attachment heretofore on this day issued for Mrs. Grace Covert, a U. S. witness, but not served, be, and said attachment hereby is quashed; and Anna Gregory having been called and sworn as a witness on behalf of the United States; and Earl Rogers, Esq., of counsel for defendants, having ob-

jected to said witness Anna Gregory testifying in this cause, it is by the court ordered that said objection be, and the same hereby is sustained, and said witness Anna Gregory is thereupon excused without having testified herein; and Barney Morris having been called and sworn as a witness on behalf of the United States, and thereupon an order having been made and entered in another cause, to wit: No. 1130 Crim. S. D. The United States of America, plaintiffs, vs. Warren Fabian, et al., defendants, which said order is elsewhere in the minutes of this day entered, dismissing said cause as to defendant Barney Morris, and said witness Barney Morris having thereupon given his testimony herein; and, in connection with the testimony of said witness, the Government having offered a theatrical contract, with signature "F. B. Beyer" thereon, for identification, which is for identification marked Pl. Ex. 4, and said exhibit having thereafter been admitted in evidence on behalf of the United States; and Daisey Smith, Dick Parks and Henry W. Delo having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; and C. F. Willard a witness on behalf of the United States, having been recalled for further
his

examination, and having given ~~their~~ testimony; and the court having given the jury the usual admonition; and the court thereupon, at the hour of 3:30 o'clock, P. M., having taken a recess for ten minutes; and now, at the hour of 3:40 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and counsel for the

respective parties having stipulated that the jury is present, and all of said jurors being present in court; and Dave Gershon having been called and sworn as a witness on behalf of the United States, and having given his testimony; and the return of the U. S. Marshal on each of two (2) subpoenas issued and filed herein having been offered and admitted in evidence on behalf of the United States; and the Government having rested; and the court having given the jury the usual admonition; and the jury having been excused until Friday, the 4th day of May, 1917, at 10 o'clock, A. M., now, at the hour of 3:52 o'clock, P. M., it is ordered that this cause be, and the same hereby is continued for further trial until Friday, the 4th day of May 1917, at 9:30 o'clock, A. M.

At at stated term, to wit: the January Term, A. D., 1917 of the District Court of the United States of America, in and for the Southern Division of California, Southern Division, held at the Court Room thereof, in the City of Los Angeles, on Friday, the Fourth day of May, in the year of our Lord One Thousand Nine Hundred and Seventeen;

Present:

The Honorable Oscar A. Trippet, District Judge.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WARREN FABIAN, et al.,

Defendants,

No. 1176 Crim. S. D.

This cause coming on this day for the further trial

of all the defendants before the court and a jury heretofore duly impanelled herein; Wm. F. Palmer, Esq., and Gordon Lawson, Esq., Assistant U. S. Attorneys, appearing as counsel for the United States; each and all of the defendants being present in court, with their counsel, Earl Rogers, Esq., M. M. Cohen, and Charles Scholz, Esq., W. C. Wren and A. S. Custer being present as shorthand reporters of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; now, on motion of M. M. Cohen, Esq., of counsel for defendants, it is ordered that the deposition of Francisco Borques on behalf of *and* said defendants be opened and published by the Clerk; and said deposition having accordingly been opened and published by the Clerk; and the deposition of said Francisco Borques on behalf of defendants having been read to the jury by M. M. Cohen, Esq., of counsel for defendants; and, in connection with said deposition, defendants having offered a Pamphlet printed in the Spanish language, which is admitted in evidence in their behalf as Deft. Ex. D.; and counsel for the respective parties having, in open court, entered into a stipulation as to certain phases of the laws of the Republic of Mexico; and the court having given the jury the usual admonition; and the court thereupon, at the hour of 10:55 o'clock, A. M., having taken a recess for nine minutes; and now, at the hour of 11:04 o'clock, A. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and counsel for the respective parties having stipulated that the jury is present, and all of the jurors being present in court;

and defendants having rested; and the testimony being closed; and this cause having been argued to the jury, on behalf of the Government, by Gordon Lawson, Esq., Assistant U. S. Attorney, of counsel for the United States, and on behalf of defendants by M. M. Cohen, Esq., of counsel for defendants; and the Court having given the jury the usual admonition; and Court thereupon, at the hour of 11:53 o'clock, A. M., having taken a recess until the hour of 2 o'clock, P. M., of this day, until which time the jurors are excused;

And now, at the hour of 2 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and counsel for the respective parties having stipulated that the jury is present, and all of the jurors being present in court and this cause having been further argued to the jury, on behalf of defendants, by Earl Rogers, Esq., of counsel for defendants; and the court having given the jury the usual admonition; and court thereupon, at the hour of 3:05 o'clock, P. M., having taken a recess for 11 minutes; and now, at the hour of 3:14 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and counsel for the respective parties having stipulated that the jury is present, and all of the jurors being present in court; and this cause having been further argued to the jury, on behalf of the Government in reply, by Wm. F. Palmer, Esq., Assistant U. S. Attorney, of counsel for the United States; and the court having given the jury the usual admonition; thereupon, at the hour of 4:05 o'clock, P. M., it is ordered that this cause be, and the same hereby is con-

tinued for the further trial of all the defendants until Saturday, the 5th day of May, 1917, at 10 o'clock, A. M., until which time the jurors are excused.

At a stated term, to wit: the January Term, A. D., 1917 of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court Room thereof, in the City of Los Angeles, on Saturday, the Fifth day of May, in the year of our Lord One Thousand Nine Hundred and Seventeen;

Present:

The Honorable Oscar A. Trippet, District Judge.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WARREN FABIAN, et al.,

Defendants.

No. 1176 Crim. S. D.

This cause coming on this day for the further trial of all the defendants before the court and a jury heretofore duly impanelled herein; Wm. F. Palmer, Esq., and Gordon Lawson, Esq., Assistant U. S. Attorneys, appearing as counsel for the United States; each and all of the defendants being present on bail, with their counsel, M. M. Cohen, Esq., A. S. Custer being present as shorthand reporter of the proceedings, and acting as such; and the roll of the jury having been called, and all being present; and the court having read to the jury its written instructions; now, on motion of defendants, by their said counsel, it is ordered that exceptions be, and they hereby are noted herein on

behalf of said defendants to each and every of the instructions offered by the Government, and also to the comments by the court on the evidence in this cause in the course of its instructions to the jury, and also to the refusal of the court to give such of the instructions requested by the defendants as the court did refuse to give; and J. W. Bell, a Deputy U. S. Marshal, having been duly sworn to take charge of the jury; the jury at the hour of 10:25 o'clock, A. M., retire in charge of

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THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WARREN FABIAN, et al.,

Defendants,

No. 1176 Crim. S. D.

The jury, at the hour of 11:53 o'clock, A. M., having come into court; Gordon Lawson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; each and all of the defendants being present on bail, with their counsel, M. M. Cohen, Esq.; A. S. Custer being present as shorthand reporter of the proceedings, and acting as such; and counsel for the respective parties having stipulated that the jury is present, and all of the jurors being present in court; and the jurors having been asked if they have agreed upon a verdict, and having, through their foreman, stated that they have so agreed, and having been required to present their verdict; and their verdict having been read by the Clerk; now, by direction of the court,

said verdict is filed and recorded by the Clerk, said verdict as so recorded being as follows, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

The United States of America, Plaintiffs, vs. Warren Fabian, Lawrence J. Chartran, Dan Malone and F. B. Beyer, Defendants. No. 1176 Crim. We, the Jury in the above entitled cause, find the defendant, Warren Fabian guilty as charged in the Indictment, and the Defendant, Lawrence J. Chartran not Guilty as charged in the Indictment and the Defendant, Dan Malone guilty as charged in the Indictment, and the Defendant F. B. Beyer, Guilty as charged in the Indictment. Los Angeles, California, May 5th, 1917.

Lynn C. Standford, FOREMAN.

And said verdict as so recorded having been read to the jurors, and the jurors having said that it is their verdict; it is ordered that said jurors be, and they hereby are excused until Thursday, the 10th day of May, 1917, at 10 o'clock, A. M.; and it is further ordered, that defendant Lawrence J. Chartran be, and he hereby is discharged; and it is further ordered that for the sentence of defendants Fabian, Malone and Beyer, this cause be, and the same hereby is continued until Monday, the 28th day of May, 1917, at 2 o'clock, P. M., said defendants last named in the meantime to remain at large under the bail bonds given by them in cause No. 1130 Criminal S. D., The United States of America plaintiffs, versus Warren Fabian, et al., Defendants.

*In the District Court of the United States in and for
the Southern District of California Southern Di-
vision.*

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WARREN FABIAN, LAWRENCE J. CHARTRAN,
DAN MALONE and F. B. BEYER.

Defendants,

No. 1176 Crim.

Verdict.

We, the Jury in the above-entitled cause, find the Defendant, Warren Fabian—— Guilty as charged in the Indictment, and the Defendant, Lawrence J. Chartran Not Guilty as charged in the Indictment, and the Defendant, Dan Malone——Guilty as charged in the Indictment, and the Defendant F. B. Beyer—— Guilty as charged in the Indictment.

Los Angeles, California, May 5th, 1917.

Lynn C. Standford,

FOREMAN.

[Endorsed]: No. 1176 Crim. U. S. District Court, Southern District of California, Southern Division, United States of America vs. Warren Fabian, et al. Verdict. Filed May 5, 1917 Wm. M. Van Dyke, Clerk By Geo. W. Fenimore Deputy Clerk.

At a stated Term, to wit: the January Term, A. D., 1917, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the Court Room thereof, in the City of Los Angeles on Tues-

day, the Nineteenth day of June, in the year of our Lord One Thousand Nine Hundred and Seventeen;

Present:

The Honorable Oscar A. Trippet, District Judge.
THE UNITED STATES OF AMERICA,
Plaintiffs,

vs

WARREN FABIAN, et al.,

Defendants.

No. 1176 Crim. S. D.

This cause coming on this day to be heard on the motion of defendants Warren Fabian, Dan Malone and F. B. Beyer for a new trial; Wm. F. Palmer, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants Fabian, Malone and Beyer being present on bail, with their counsel, Earl Rogers, Esq., M. M. Cohen, Esq., and Charles Scholz, Esq.; W. C. Wren being present as shorthand reporter of the proceedings and acting as such; and said motion for a new trial having been argued, in support thereof, by Earl Rogers, Esq., of counsel for defense, and in opposition thereto by Wm. F. Palmer, Esq., Assistant U. S. Attorney, of counsel for the United States, and in support thereof in reply by Earl Rogers, Esq., of counsel for defendants; and court, at the hour of 11:25 o'clock, A. M., having taken a recess for 12 minutes; and now, at the hour of 11:37 o'clock, A. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and this cause having been submitted to the court for its consideration and decision on said motion for a new trial;

and the court having announced its conclusions thereon, it is accordingly ordered that the motion of defendants Fabian, Malone and Beyer for a new trial be, and the same hereby is denied, to which ruling of the court, on motion of counsel for defendants and by direction of the court, exceptions are hereby noted herein on behalf of defendants Fabian, Malone and Beyer; and a motion of said defendants Fabian, Malone and Beyer in arrest of judgment having been filed herein in open court, it is by the court ordered that said motion in arrest of judgment be, and the same hereby is denied, to which ruling of the court, on motion of counsel for defendants and by direction of the court, exceptions are hereby noted herein on behalf of said defendants Fabian, Malone and Beyer; and this cause having thereupon come on for the sentence of defendants Warren Fabian, Dan Malone and F. B. Beyer; and statements in litigation of sentence having been made by Earl Rogers, Esq., of counsel for said defendants; and statements concerning sentence having been made by Wm. F. Palmer, Esq., Assistant U. S. Attorney, of counsel for the United States; and court, at the hour of 12:02 o'clock, P. M., having taken a recess until the hour of 2 o'clock, P. M., of this day;

And now, at the hour of 2 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; and further statements in litigation of sentence having been made by Earl Rogers, Esq., of counsel for defendants; and court, at the hour of 2:18 o'clock, P. M., having taken a recess for 11 minutes; and now, at the hour of 2:29 o'clock, P. M., court having reconvened; and

defendants, counsel and shorthand reporter being present as before; the court therefor pronounces sentence upon said defendants Fabian, Malone and Beyer for the offense of which they stand convicted, namely conspiracy to violate the Mann White Slave Act, in violation of Section 37 of the United States Criminal Code, as follows, to wit: The Judgment of the Court is, that each one of said defendants Warren Fabian, Dan Malone and F. B. Beyer pay a fine of one thousand (1000) dollars, and that each of said three defendants stand committed to the County Jail of Los Angeles County, California, until his fine is paid; and defendant Beyer having announced his intention to sue out a writ of error herein, it is ordered that the amount of the bond of said defendant F. B. Beyer on writ of error be, and the same hereby is fixed at \$2000.00, and it is further ordered, on motion of said defendant, that defendant F. B. Beyer be, and he hereby is granted twenty (20) days within which to prepare, serve and file bill of exceptions herein; and said defendant F. D. Beyer having presented his petition for writ of *writ of* error and assignment of errors, which are filed herein, and order allowing writ of error to the United States Circuit Court of Appeals for the Ninth Circuit and a citation are signed in open court, and a writ of error accordingly and bond on writ of error are approved and filed in open Court.

*In the District Court of the United States for the
Southern District of California, Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

v.

F. B. BEYER,

Defendant.

No. 1176, Crim.

Bill of Exceptions of Defendant F. B. Beyer.

Be it remembered that heretofore, to-wit: on the 20th day of December, 1916, the Grand Jury of the United States, in and for the Southern District of California, Southern Division, did find and return unto the above entitled Court its indictment against the defendants, F. B. Beyer, Warren Fabian, Lawrence Chartran and Dan Malone, for violation of Section II of the Mann White Slave Traffic Act, and thereafter, on the 11th day of January, 1917, the said F. B. Beyer appeared in said Court and was duly arraigned upon the said indictment and entered his plea of "not guilty" thereto, and thereafter, upon the 11th day of January, 1917, the said F. B. Beyer filed a demurrer to said indictment, and thereafter, upon the 11th day of January, 1917, the said demurrer was duly heard by said Court, which duly and regularly made its order overruling said demurrer, to which order of the Court, then and there made, overruling the demurrer of said defendant, the said defendant took an exception, which exception was then and there duly and regularly allowed and entered by the Court; that, upon the 11th day of January, 1917, said defendant

filed in said Court his Motion to Quash said indictment, and thereafter, on the 11th day of January, 1917, said motion was duly heard by said Court, which duly and regularly made its order denying said motion, to which order of the Court, then and there made, denying the motion of said defendant, the said defendant took an exception, which exception was then and there duly and regularly allowed and entered by the Court.

That thereafter, upon the first day of May, 1917, said cause came on duly and regularly for trial, the Government being represented by Fleet W. Palmer and Gordan Lawson, Esqs., Assistant United States District Attorneys for the Southern District of California, and the defendant being represented by Earl Rogers, Charles Scholz and Milton M. Cohen, Esqs. Thereupon the jury to try the cause was duly and regularly impaneled and the following proceedings took place on and during the trial, to-wit: Opening Statement on Behalf of the Prosecution by Mr. Palmer:

MR. PALMER: May it please the court and gentlemen of the jury:

I don't know that there will be any serious conflict between the defendants and the Government as to what the facts are in this case. I apprehend that the conflict will come upon what these facts prove.

I believe that the evidence will show you that the defendants, F. B. Beyer, who was one of the owners of the Owl Cafe at Mexicali, which is just across the line in Mexico from Calexico, which is in the State of California, and L. J. Chartran, another one of the defendants, who was a bartender in this Owl Cafe in Mexicali, and Dan Malone, who was the man-

ager of the Owl Cafe, and Warren Fabian, who was the manager of the entertainment part, the manager of the chorus, and the evidence may show—

THE COURT: The manager of what?

MR. PALMER: The chorus.

THE COURT: Oh, yes.

MR. PALMER: And the evidence may show that this chorus was known by the name of Flora Dora Babies, some such name as that. This Owl Cafe was all under one roof. The front room was where the bar was located, the bar and the ice box that has to go with the bar. And also in the room where the bar was, was located gambling tables, where I presume a man might play any kind of a game. I presume the evidence will show that a man might play any kind of a game that is known to the gambling fraternity, starting perhaps with cent ante, and going all the way up to old high, or down to old high. And in that room men were there for the purpose of gambling and for the purpose of drinking at the bar.

Now at the rear of that room, of that portion, was a picket fence, a low picket fence, and back of that was a dance hall. In that dance hall there was a place for the orchestra, of course, and a floor space where dancing might be done and where the Flora Dora Babies displayed themselves upon the floor; and also along the sides were tables ranged, and those tables—there were seats, rather; when you go into the table, it was a kind of a nook, a breakfast room proposition. You go in, and there are seats for two on this side of the table, and seats for two on this side of the table, and then the back of the seat formed a

partition, and right on the other side was a seat for two more, and then a table, and then a seat, and so on, on each side of the rooms.

And then the chorus, the entertainers, came into this dance hall at certain stated periods, their time of work beginning at 7:30 in the evening and closing at 3 o'clock in the morning, the next morning. And they would come upon the floor, perhaps the evidence will show, in skin tights,—I don't know just exactly what they may mean, but that is probably what the evidence will show; and they would perform as the chorus performed, and after they had done that they would retire then to their dressing rooms, and there they would put on another kind of clothes, and the other kind of clothes that they would put on, as I am informed the evidence will show, was Buster Brown suits; and then they would come out upon the floor and dance with such men as were there in the dance hall. They would respond to requests to dance, if there were such; and, if not, they would request the dance.

I think the evidence will show that it was always leap year in that dance hall. And the evidence will show also that after they danced, or when they danced, or at any time when they danced, that they would take men and drink with them, and a part of their arrangement was that if they cared to do so, that they would be allowed 40 per cent on all drinks that were sold to them with whom they were sitting, unless it was Schlitz beer, and if they sold Schlitz beer, then their profit was to be 50 per cent on the sales. I don't know whether the evidence will show that that was

not as good beer as others or not. I don't know that the evidence will go into that.

The evidence will also show that immediately in the rear of the dance hall, and immediately by the door where these girls went, the chorus went, to change their clothing,—their dressing-room—there was another door, and that door led out into a hallway, upon each side of which were small dens, commonly called cribs, and in those cribs were prostitutes, practicing prostitution. And the evidence will show you, I believe, that those prostitutes, when the dance was going on in the dance hall, came out of those cribs upon the dance floor, and at the same time that the chorus girls were dancing with men, whatever men were there, that these prostitutes also were dancing with men, and that the solicitation was to take the men to the cribs. And that the chorus girls knew what was going on there; they knew these women were prostitutes; they knew that they were upon the dance floor with prostitutes; they knew that the men were dancing with prostitutes, and that those prostitutes were soliciting men upon the dance hall floor to go into their cribs with them. The evidence will show you that they knew all about that, and the evidence will show you that the surroundings there were of that character.

Now, the evidence will also show you that these four defendants brought women who were not prostitutes down to Calexico, and had them to live in Calexico, in a hotel. The evidence will show you that they had those girls to go across the line at night, and to take the part of the Flora Dora Babies there upon that dance hall floor. It will show you that these

defendants, in order to protect themselves, perhaps, from a prostitution under the Mann Act, made in their contracts with these girls stipulations that they should not practice prostitution; that if they were guilty of practicing prostitution, that they would be discharged, and some such things of that kind. But the evidence will show you that these men, these defendants, knew when they asked these girls to go down there the character of the place; they knew that they were taking these girls to perform in a whore house; they knew they were taking these girls down there to associate with whores; they knew, and the evidence will show, that they paid the price, they paid the fare of these girls to take them down there; that these girls were not prostitutes themselves, but they were taken there, and these defendants knew when they were taking them there that they were taking them there to associate with whores and that they were taking them there for the purpose of drinking with men whores, as well as association with women whores, and subjecting them to the things that a woman would be subjected to, to the solicitations of men who were drinking and in a place of that kind.

Now, gentlemen, we believe if the evidence shows the things that I have stated to you, that there can be no question but that these defendants have been guilty of violating the Mann Act; and if we prove the things that I have suggested to you, we shall ask at your hands a conviction of the defendants.

I thank you.

Motion, discussion, objection and exception of defendant of any evidence being submitted to jury in pro-

ceeding on the ground that face of indictment discloses the filing of same before found. (Reporter's Transcript page 3):

MR. ROGERS: If your Honor pleases, we desire at this time, before counsel offers any evidence or makes an opening statement as to the evidence which he expects to introduce, I desire to move to dismiss this case, and I object to the introduction of any evidence under the indictment—the motion being, I take it, to the same effect—upon these grounds: The indictment commences with this statement: "At a stated term of said court, towit, the District Court of the Southern District, begun and holden in the city of Los Angeles, county of Los Angeles, within and for the Southern Division," and so forth, "on the second Monday of January in the year of our Lord one thousand nine hundred and sixteen, the grand jurors of the United States of America, chosen and sworn within said division, on their oaths present."

THE COURT: And it was in the July term?

MR. ROGERS: Yes sir. Pardon me, sir. I will reach the correct statement. "Heretofore, to-wit, on or about the 1st day of January in the year of our Lord one thousand nine hundred and sixteen, in the Southern Division of California," and so forth, they did certain things.

Now, the indictment has this endorsement: "A true bill, presented and filed in open court this 20th day of December, 1916."

The indictment, therefore, appears to have been found by a jury, a grand jury, during the month of

January, 1916, and not to have been filed during the existence of that grand jury.

And, moreover, it appears that the offense is said to have been committed subsequent, according to the allegations of the indictment, subsequent to the time—prior, I should say, to the finding of the indictment. In other words, the indictment was found before the offense is said to have been committed. Now, if the grand jury was holding its sessions and finding in January of 1916 the acts alleged to have been committed, the overt acts which are set forth,—it is not necessary I specify each one of them which are said to have been committed subsequent to the empaneling of the grand jury—before the empaneling of the grand jury that found the indictment.

I presume—I don't know but what it is true that it is probably a clerical error, but nevertheless I doubt the jurisdiction of this court, or the district attorney, to amend an indictment without resubmission to a grand jury for the purpose of consideration. I have looked up the matter rather carefully, and I find that there is no provision for the amending of a document found by a grand jury. The grand jury must itself amend its own papers, and I therefore object upon the ground that the indictment shows upon its fact that it is invalid and that the overt acts were not committed within the time that the grand jury existed.

THE COURT: Let me see the indictment.

MR. PALMER: I take issue with the gentleman on the proposition that the overt acts were not committed before the indictment was returned. The indictment shows it was returned on the 20th day of December,

1916, and the allegations in the indictment are that the acts were committed before that, before the returning of the indictment. The substance of the indictment—I think the gentleman is correct there, that we would not have a right to amend the substance of the indictment, but this matter is merely the opening of the indictment. It has nothing to do with the material part of the indictment; and under section 1025, that is a mere error in form and does not affect the rights of the defendants in any way.

And before the court rules upon the motion, I desire to introduce the records of the court, showing when the grand jury was empaneled, of which Gail B. Johnson was the foreman, and when the indictment itself was returned into court. And if the court sees proper, or feels that it is necessary, we will ask to change that word "January" to "July." It is very plainly a clerical error.

THE COURT: What does the record show?

MR. PALMER: The record will show that the grand jury was empaneled at the second—

THE COURT: In July, 1916?

MR. PALMER: In July, 1916, and Gail B. Johnson was appointed foreman of that grand jury.

THE COURT: So that this indictment was returned after that date?

MR. PALMER: And that afterwards, on the 20th day of December, 1916, this indictment was returned, upon the day that it was filed, yes sir.

MR. ROGERS: I think that counsel misapprehends the point. I think the clerical error consists, if it be one, in not the caption of the indictment, but many

of the substantial allegations of the indictment. I have no doubt that the grand jury of which Gail B. Johnson was foreman, the records will show was impaneled at a certain time; but, nevertheless, the indictment shows all the way through, a mistake, if it be one, or the allegations, if they are material at all, continue all the way through the indictment; and, therefore, it is a matter of substance, and not merely a matter of caption.

MR. PALMER: I think that there is no error that is contained in the body of the indictment; it is merely in the caption. I think that the dates, all of them, agree with the statement that I have made as to what the record will show.

THE COURT: This indictment was returned on December 20, 1916. Now, the conspiracy is alleged to have occurred January 1st, 1916, and the overt acts set forth are on May 20, 1916, April 13, 1916, May 18, 1916, March 24, 1916, March 16, 1916, March 25, 1916, March 23, 1916, March 25, 1916, and so on. Suppose that the indictment started in at the second paragraph, "The grand jurors of the United States of America, chosen, selected and sworn, within and for the division and district aforesaid, on their oaths present." Would not that be a good indictment, leaving out that first paragraph?

MR. ROGERS: I don't think so.

THE COURT: I will overrule the—motion, is it, or objection?

MR. ROGERS: Both, sir; one motion and an objection.

THE COURT: Well, the objection will be over-

ruled, and the motion will be overruled, and an exception allowed to the defendants.

MR. ROGERS: Your Honor will permit us to enter an exception to each order.

THE COURT: Yes. Proceed, Mr. Palmer.

MR. PALMER: Now, your Honor, we ask to amend the caption.

THE COURT: By what authority can you amend an indictment?

MR. PALMER: We are not asking to amend the indictment. We are asking to amend the caption.

THE COURT: I don't know anything about that. You want to change "January" to "July."

MR. PALMER: To July.

THE COURT: On the second Monday of July.

MR. PALMER: First, I will ask to introduce the record.

THE COURT: I understood you had introduced them. Have you got the records here?

MR. PALMER: Yes sir.

THE COURT: When was the July grand jury impaneled?

THE CLERK (MR. WILLIAMS): The 24th of July, 1916.

THE COURT: The 24th. That would not be the second Monday.

MR. ROGERS: No, sir.

THE CLERK (MR. WILLIAMS): The term began on the second Monday.

THE COURT: The term began on the second Monday in July.

THE CLERK (MR. WILLIAMS): Yes, sir.

MR. PALMER: Yes, sir.

THE COURT: By what authority, Mr. Palmer, do you want to amend?

MR. PALMER: I have a case here, United States against Howard, in the 132nd Federal Reporter, in which the same question arose.

THE COURT: Who made the opinion?

MR. PALMER: The opinion is written by Hammond, Judge.

THE COURT: District Court?

MR. PALMER: Yes, sir, the District Court in the Western District of Tennessee.

MR. ROGERS: I did not get the book and page.

MR. PALMER: 132 Federal, and the case begins at 325, but I shall read at 343. I will begin at 342.

The grounds of the demurrer now being considered present two other very important questions as to the sufficiency of these indictments, but, in view of what has already been said upon the subject of necessity for swearing witnesses, it is thought to be hardly necessary to consider or decide them. First it is objected that it is nowhere alleged in the indictments by what court or before whom the suborned witnesses were sworn; secondly, it is objected that it is not alleged that the court or person administering the oath had authority to administer the same. However, it may be well enough to point out the bearing of these two objections upon that which has just been disposed of. As before, it is conceded that these indictments do not in specific terms designate the court before which the alleged perjury was committed, nor in which the

issue was pending to which the indictments relate, unless we can refer to the caption of these indictments in aid of this omission, and it is the contention of the district attorney that we may do this. The caption, it will be observed, from the copy of the indictment *supra*, designates the court with technical particularity in which these indictments were found. But this is wholly beside the question, which is not in what court these indictments were found, but in what court were the perjuries committed—an altogether different matter and a matter of acknowledged substance. The presiding judge here knows outside of these indictments that the alleged perjuries were committed in the court designated in the caption of these indictments because he presided at the Howard trial, which took place in that court; the learned counsel for the defendant also knows that fact outside of these indictments, because he defended Howard then as now; and the public history of those trials, and the records of this court designated in the caption, show that those trials took place in that court. But it is obvious that such knowledge as this cannot aid the insufficient averments of these indictments. Again, we also judicially know that contemporaneously with the sitting of the United States District Court for this district at Jackson at the time of the Howard trials—that being the court mentioned in the caption of these indictments—there was another court of the United States sitting, which had, under the law, concurrent jurisdiction of the offenses for which Howard was being tried. The indictments against him for the criminal misuse of the mails might have been found in the Circuit Court,

trials might have taken place in that Court, and the perjuries of the suborned witnesses might have been committed in that court. Therefore it goes without saying that these indictments should definitely state in which of these two courts the trials were had and the perjuries committed. Now, then, the caption of these indictments relied upon by the district attorney as a sufficient averment that they took place in the District Court, and not in the Circuit Court, does not in itself show or tend to show that fact. It does show that these indictments for subordination of perjury by Howard were duly and lawfully found and presented in that court. The technical commencement of the indictments also shows that the grand jurors were duly elected, impaneled and sworn, and that upon their oaths they made the presentment of the grand jury to that court in a lawful manner. But this is the only function belonging to the caption and commencement, for it seems well settled that, while they constitute a part of the record of the criminal proceeding against Howard for subornation of perjury, they are not technically or substantially a part of the indictments themselves. 1 Enc. Pl. & Pr. 693; 10 Enc. Pl. & Pr. 418, 419, 421, 424, 425, 428; arch. Cr. Pl. 26; 1 Chit. Cr. 226; 1 Bish, Cr. Pro. (3rd Ed.) 653, 551, 662, and notes; Id. (1st Ed.) 154.

These authorities also show that the common-law prohibition against any amendment of the indictment does not apply to the caption or commencement, for the very reason that they are not a part of it. They are exempt from that rigor which obtains even now in matters of substance against amendments only, because

they are so wholly outside and apart from the indictment itself. The district attorney has not cited a single case which decides that you may look to the caption or the commencement to aid imperfect or uncertain allegations in the body of the indictment."

I would be willing to rest the matter, though, Your Honor, upon the introduction of these records, without the amendment.

THE COURT: Well, I don't think there is any amendment necessary. I think the first paragraph of the indictment is wholly unnecessary to a good indictment.

MR. PALMER: With the understanding that these records have been introduced—

THE COURT: I understand they have been introduced.

MR. PALMER: Yes, and that they show that this grand jury was impaneled—

MR. ROGERS: Pardon me, Mr. Palmer. I object to the introduction of the records. I do not object upon the ground that they are not produced, or that they are not read, or any matter of that sort, but I object upon the ground that my position is that this court has not the right to consider the matter in this form; that they are immaterial and irrelevant at this time; and that this court has no jurisdiction or right to amend an indictment or to change its averments; and therefore the records would be immaterial and irrelevant, and for that reason I object. But I do not object upon the ground that the records are not produced, and I waive any question that there may be about the regularity of them, or anything of that sort.

MR. PALMER: And also you will stipulate that the records show that the grand jury—

MR. ROGERS: I do not doubt your statement as to what the records contain in any way.

THE COURT: The records, as I understand, show that this grand jury was impaneled in July, 1916, that returned this indictment; that it was impaneled on the second Monday of July, 1916, instead of on the second Monday of January, 1916.

MR. PALMER: That is, that the term began on the second Monday.

THE COURT: The term began on the second Monday of July, instead of the second Monday of January.

MR. PALMER: Yes, and that Gail B. Johnson was appointed the foreman.

THE COURT: And the record shows that Gail B. Johnson was foreman of that grand jury so impaneled in July, 1916. It is my opinion that the first paragraph in this indictment, reading as follows: "At a stated term of said court, begun and held at the city of Los Angeles, county of Los Angeles, within and for the Southern District of California, on the second Monday of January, in the year of our Lord one thousand nine hundred and sixteen," is surplusage, and not necessary to the validity of the indictment. I am further of the opinion that if that paragraph is necessary to the validity of the indictment, the court will take judicial notice that this indictment was returned by the grand jury impaneled in July, 1916, and by such a jury, and that the term of court began on the second Monday of July instead of the

second Monday of January. The application to amend the indictment will be denied.

MR. ROGERS: We desire an exception to the ruling of the court, not upon his refusal to allow an amendment, but upon his ruling as to the sufficiency of the indictment.

TESTIMONY OF SALLIE MARGARET CLAXTON FOR THE GOVERNMENT:

Sallie Margaret Claxton, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows: (page 29 of Reporter's Transcript)

My name is Sallie Margaret Claxton. I live at the Belmar Hotel in this city. I am married and have been married for five years. In March, 1916, I worked at the Regal Theater in Los Angeles as chorus girl. I had been working as chorus girl for seven or eight years before my marriage, traveling with theatrical companies in Texas, New York, Chicago and other places. I know all of the defendants except F. B. Beyer and I only know him to see him. I first met Warren Fabian at the Regal Theater. I first saw Mr. Beyer at Callexico—then at Mexicali in a cafe. I don't know what position he occupied. I had no business with him whatever.

Q. (Transcript, P. 34) Now, did you have any conversation with the defendant Warren Fabian about going to Mexicali?

MR. ROGERS: That is objected to as incompetent, irrelevant and immaterial, and no foundation has been laid. I think the same objection that the authority of Mr. Fabian has not been shown to bind the others, and

(Testimony of Sallie Margaret Claxton.)

particularly with respect to a conversation he may have had, in view of the concession of counsel that the so-called conspiracy evidence will consist of employment to do certain things in a certain way—in other words, he was an employee, and therefore bound by the terms of his employment, until some conspiracy of another sort is shown, if counsel can do it; but I think that ought to be shown first, and the foundation laid.

THE COURT: Well, the evidence is undoubtedly admissible against Fabian, and would not bind the others unless it is shown that a conspiracy existed prior to the time that it was done, and existed at that time, and that this was part of the scheme, or in furtherance of it, or something, or part of the *res gestate*.

MR. PALMER: Of course, your Honor, if we would offer the suggestion—

THE COURT: The objection will be overruled. Proceed.

MR. ROGERS: Except.

MR. PALMER: Just read the question.

(Question read.)

A. Mr. Fabian was just at the theater, and he asked me if I would go down, and I told him I didn't—

Q. Now wait. Go down where?

A. Down to Mexicali.

Q. Tell just what he said to you.

A. I told him I didn't know whether I could go or not, on account of my mother; that I would ask her and let him know later.

Q. Do you know about when that was?

(Testimony of Sallie Margaret Claxton.)

A. Well, I was only down there two weeks, and it was just the last week in May and the first week in June.

Q. That you were down there?

A. Yes, sir.

Q. BY THE COURT: How long prior to the time you went down there did you have this conversation?

A. About a week before I went, I think it was.

Q. BY MR. PALMER: Now, did he tell you at that time anything about what your duties would be?

A. Yes sir.

Q. Now, state what he told you.

A. He told me that the salary would be \$25 a week, and that I was to work in the chorus, and that if I wanted to I could work on the dance floor, and if I didn't, I didn't have to.

Q. Well, did he tell you about what was there on the dance floor?

A. No sir, only the dance floor, the drinks, and commission on drinks.

Q. What if anything did he say to you about commission on drinks?

A. He said I got 40 per cent on everything but Schlitz, and that was 50 per cent.

Q. Do you think of anything else now he told you at that time?

A. No, sir.

Q. Was anything said to you at all about how you would go down there?

A. Why, take the train.

(Testimony of Sallie Margaret Claxton.)

Q. Yes, but how about the fare; anything said about that?

A. No sir; I asked Mr. Malone if he would let me have a little money to give to my mother, and he gave me fifteen dollars.

(Page 40 of Transcript) Q. You bought your own ticket?

A. Yes sir.

Q. Where did you get your money to buy that ticket with?

A. I was working at the Regal Theater, and I quit on Sunday and I had twelve dollars coming. I went to the depot by myself and caught a train, and arrived at Calxico.

Q. Mr. Malone, though, had given you fifteen dollars prior to that?

A. Yes sir,—not for that, no sir. I asked him for it to send home to my mother.

Q. But he had given you the fifteen dollars prior to your buying this ticket; that is correct, is it?

A. Yes sir.

Q. That is correct, is it?

A. He gave it to me to send home. I never said anything about a ticket.

(Page 45 of Reporter's Transcript) Q. You went then to the Owl Cafe?

A. Yes sir.

Q. What was the first thing that you came to when you went up to the entrance of that Owl Cafe?

A. The gambling tables was in front, where you had to go through.

(Testimony of Sallie Margaret Claxton.)

(Page 47 of Reporter's Transcript) Q. BY MR. PALMER: Mrs. Claxton, as you went into the room was the bar on the right or the left?

A. It was on the right, if I remember quite well.

(Page 48 of Reporter's Transcript) Did you see women drinking at the bar?

A. Yes sir.

Q. And standing with men at the bar, drinking?

A. Yes sir.

Q. Now when you passed through this gambling room, what was the next room you came to?

A. Why, it was the dance floor.

(Page 53 of Reporter's Transcript) Q. Now when you went into the place in the first place, you went onto the dancing floor?

A. Yes sir.

Q. And then did you go on to a dressing room?

A. Yes sir.

Q. Now where was that dressing room?

A. Right back of the orchestra, and the orchestra was right in the middle of the dance floor, way back.

Q. Back at the far side of the dance floor, away from the front room?

A. It was right in the center, the orchestra was, right in the back; and then there was a door right beside the piano, and the first room was our dressing room.—

Q. Now in that place did you all use one dressing room?

A. Yes sir, all the girls.

Q. All the girls used the same room?

(Testimony of Sallie Margaret Claxton.)

A. Yes sir.

Q. And beyond that was there any other door?

A. There was rooms back there, but I don't know what was back there, because we was never allowed back there.

Q. The door was right by your dressing room door?

A. Yes sir; there was just a little wall, and then this door.

Q. And your dressing room door was right here at the left, and this other door was—

A. The hall run right straight down.

Q. Right straight back?

A. Yes sir.

Q. Now how was the chorus dressed when it performed?

A. Why, sometimes we had on long dresses, and sometimes we had on dresses that came to our knees.

Q. Were they at any time performing in skin tights, as they are called?

A. No sir; we didn't wear tights; we wore stockings.

Q. What were your working hours?

A. From 7:30 until 3.

Q. From 7:30 in the evening?

A. Until 3.

Q. Until 3 the next morning?

A. I think that is what it was.

Q. You would give two performances in that time?

A. Yes sir.

Q. Between those times what were you doing?

(Testimony of Sallie Margaret Claxton.)

A. Working on the dance floor if we wanted to, and if we didn't we could sit in the dressing room.

Q. After you had changed your clothing, what did you do on the floor?

A. Go back out on the dance floor and dance.

Q. With whom?

A. With men that was in the cafe.

Q. If men asked you to dance, you would dance with them? A. Yes sir.

Q. What, if anything, was done with regard to having the men to drink?

A. There wasn't anything done. They danced, and then they went over to a table and sat down.

Q. Would the girls ask them to drink?

A. No sir.

Q. They got a per cent. on the amount that was sold, didn't they?

A. Yes sir.

Q. BY MR. PALMER: Now did you see other women there besides the girls in the chorus?

A. Yes sir.

Q. Do you know where those women stayed?

A. Back in the back part of the place, some place.

Q. Do you know what their business was there?

A. No, I know that men went back there.

Q. When you would dance on the floor, did these women dance on the floor at the same time you did?

A. Yes sir, at the old place they did.

Q. (Page 58 of Reporter's Transcript) Now, had you, before you went down there, had you ever practiced prostitution? A. No sir.

(Testimony of Sallie Margaret Claxton.)

Q. Do you know whether there were other rooms in the rear of the dance hall besides the ones that were off from the door that opened right near your dressing room? A. No sir.

Q. Now, you went with men to the tables.

A. Yes sir.

Q. —to drink—Did you ever go to the tables with men to drink? A. Yes sir.

Q. And did you get a percentage from those drinks?

A. Yes sir.

Q. When you went to the tables to drink, did you drink with the men?

A. Not all the time, no sir.

Q. You did some of the time?

A. Yes sir.

Q. Now you lived all the time where?

A. Over at the Virginia Hotel, in Calexico, California.

Q. Now when you were there on the dancing floor, did you at any time see any men that you had danced with or had drunk with going with women back into these rooms *back*?

A. I never noticed a man that close.

Q. You do know, though, of seeing men going back there with those women that lived back there, or stayed back there?

A. Yes sir.

Q. You knew what they were going back there for, didn't you?

A. Why, it was plain enough to be seen.

(Testimony of Sallie Margaret Claxton.)

Q. Anyone could see what that was?

MR. ROGERS: I object to that as calling for a conclusion or opinion, and incompetent, irrelevant and immaterial.

THE COURT: The objection will be sustained.

MR. ROGERS: I move to strike out that answer, "It was plain enough to be seen," as incompetent, irrelevant and immaterial and not responsive.

MR. PALMER: I think, your Honor, that it is not open to that objection.

THE COURT: Well, I would not sustain the position of the United States Attorney on that proposition. I think the evidence, however, is material, and a proper answer, and a proper case for the witness to give an opinion on. The motion will be denied.

MR. ROGERS: Exception.

Q. BY MR. PALMER: How many women were there that stayed in the rooms back of the dance hall that you speak of?

MR. ROGERS: Objected to.

A. I couldn't tell you.

Q. BY MR. PALMER: Was there more than one?

MR. ROGERS: Objected to.

A. Yes sir.

MR. ROGERS: I think the witness has plainly stated that she has never been back there, and she never went back of that dressing room, and I don't think she can tell from her own knowledge how many women did live back there, or stayed there, as counsel says now, and it is incompetent, irrelevant and imma-

(Testimony of Sallie Margaret Claxton.)

terial. The witness answered so quickly I could not object.

THE COURT: Well, I will not regard that, Mr. Rogers. If I thought the evidence was immaterial or impertinent, I would strike it out, but I think the answer is—the question and answer are both appropriate. The jury will judge the materiality of it, or the weight of it, I mean.

..MR. ROGERS: We except.

Q. BY MR. PALMER: During the time that you were there entertaining and dancing on the dance floor in that old place, were any indecent proposals made to you upon the floor of that dance hall by men with whom you were dancing and drinking?

MR. ROGERS: Objected to as incompetent, irrelevant and immaterial and calling for a conclusion or opinion, and no foundation laid.

THE COURT: Well, Mr. Palmer, it seems to me like it is calling for what is known as a conclusion and the witness' opinion, as to whether or not any proposals made to her were indecent; and it seems to me like the defendants would not necessarily be bound by what their guests did, as far as the conspiracy was concerned. I will sustain the objection to the question.

MR. PALMER: If the court will pardon me, I will put another question, however, along the same line, Mr. Rogers.

MR. ROGERS: Well, if your Honor pleases—

MR. PALMER: That is not open to an objection that is suggested by the Court.

MR. ROGERS: Well, go ahead.

(Testimony of Sallie Margaret Claxton.)

THE COURT: Proceed Mr. Palmer.

Q. BY MR. PALMER: While you were there in that old place and dancing with men upon that dance floor, and in the place where you were drinking with them, were you solicited by the guests of the house, or any of them, to have sexual relations with them?

MR. ROGERS: I object to that as incompetent, irrelevant and immaterial, hearsay, and not within the issues, and no foundation laid, and not binding upon the defendants, any more than my friend Schenck would be bound if some rascal spoke to a woman in the Nat Goodwin Cafe. I don't believe they could be bound.

THE COURT: I will hear from you Mr. Palmer, on the proposition.

MR. PALMER: The charge in the indictment is that these men conspired to take these girls to a place where they would be debauched and where they would be subject to debauchery. Now, however, these defendants may have guarded their contracts with these girls, I deem that if they have taken them to a place where prostitution was being practiced by women on the floor, and associated them with prostitutes on the floor of the dance hall, so that they would be solicited to have illicit sexual relation with men, that then they have been guilty of a violation of the law that brings them to a place where they will be subject to be debauched. The charging part of the indictment is—

THE COURT: Where are you read^{ing} from now?

MR. PALMER: I intend to read, your Honor, beginning with page 2, at line 14.

(Testimony of Sallie Margaret Claxton.)

THE COURT: "To-wit."

MR. PALMER: After "to-wit." "For the purpose of debauchery, to-wit, for the purpose of acting as entertainers and chorus girls, that is to say, singing and dancing in a certain building in Mexicali, in the Republic of Mexico, which said building would be known as the Owl Cafe, and the ground floor of said building where said women and girls would act as entertainers and chorus girls as aforesaid would consist of one large room with a certain space set aside for a dance hall and certain space set aside for a gambling hall, and certain space set aside for a bar where intoxicating liquors would be sold, and a certain space would be set aside for tables and chairs where intoxicating liquors would be drunk; and leading off from said ground floor of said building there would be two hallways on either side of which said hallways there would be small rooms, commonly termed cribs, where various and sundry other women and girls, whose names are to the grand jurors unknown, would engage in the practice of prostitution, that is to say, would engage in sexual intercourse with men other than their husbands, and it would be part of the duty of said women and girls aforesaid"—

(Page 65 Transcript) Q. BY MR. PALMER: Were there any restrictions placed on the girls drinking? A Beer was the only thing that they served to the girls.

(Page 66 Transcript) Q. Have you seen members of the chorus there intoxicated? A. No sir.

(Testimony of Sallie Margaret Claxton.)

Q. Never saw any of them intoxicated?

A. No sir.

Q. What kind of dancing was had on that floor?

A. Just the same kind of dancing as you see in any public dance hall.

Q. Well, what?

A. Waltz, two-steps, one-steps.

(Page 67 Transcript) Q. And you have seen intoxicated men there on the floor? A. No sir.

Q. Did you ever see any men there intoxicated?

A. Not on the dance floor, no sir.

Q. You have seen them there, though, in the building?

A. Out in the front and out in the street.

Q. Not on the benches, not at the tables?

A. None back in the dance floor, no sir; they didn't allow it.

(Page 68 of Transcript) Q. Did you ever see any conduct there by any of the girls towards the men that was indecent in its character?

A. No sir.

(Page 70 of Transcript) Q. Would other girls come there, except the chorus girls, to dance?

A. Yes sir.

Q. And besides the girls that were employed in these side places, associated with the institution?

A. I don't just understand.

Q. Well, would girls come from the village in there to dance?

(Testimony of Sallie Margaret Claxton.)

A. Yes sir, I saw quite a few strangers in there, women that I never seen before.

Q That did not belong to the cafe?

A. Yes sir.

Q. To what extent would those women come in there?

A. Have a drink and dance.

(Page 71 of Transcript) THE COURT: Mr. Rogers, I will hear from you on this question of the admissibility of the evidence, what the guests said to this lady.

MR. ROGERS: In my judgment, if your Honor pleases, the question—

THE COURT: Stipulate the jury is present?

MR. ROGERS: I do, yes sir.

MR. PALMER: So stipulated.

MR. ROGERS: In my judgment, if your Honor pleases, the question here is the personal debauchment of any of the persons named in the indictment, as the subject of the violation of the Mann Act. Now, it is true if there was any debauchment, if there were any instances of debauchment, of which the defendants were cognizant, or which they permitted, I venture to say that it is admissible under the allegations of the indictment. But there might be isolated instances here and there, without the consent of the defendants, not in their presence, not in their hearing, which would not bind them or affect them. In other words, a matter of that sort might occur to any woman at any place. Now, I want your Honor to understand my position. If by virtue of anything the defendants did,

(Testimony of Sallie Margaret Claxton.)

if by virtue of any things they told her to do, she became the subject, as a matter of business, or as a matter of the direction of the defendants, to any solicitation for debauchment, that would be admissible. In other words, if she, by reason of any acts of the defendant, was put in a place where they intended she should be, or they had reason to suppose she would be the subject of solicitations for debauchment, I venture to say that would be admissible. But isolated instances which could not be prevented by the defendants, which was not within their purview, or not intended by them, then this question is altogether too general.

Now, I will say to your Honor, it is my view that counsel may introduce any instances of debauchment on the part of any witnesses which was brought about by the acts of the defendants, which they were cognizant of, which their acts, as a matter of fact, did lay the foundation for. I think that is within the purview of the indictment. To say simply at any time under any circumstances, in any occasion, were you subject of solicitations, that I think is altogether immaterial and not binding upon the defendants themselves. I trust I have made my position clear.

THE COURT: I think I understand you. My idea about it is if this lady had actually participated in the—what seems to occur there back of the stage that that would be a fact that would be appropriate in this case. Now, it seems if she were solicited by the guests to go back there in those cribs, that would be evidence from which the jury might draw the conclusion, if

(Testimony of Sallie Margaret Claxton.)

they saw fit, that the defendants were cognizant or knew that this thing might happen. Now, every man knows—we all know that the solicitation of a woman to become immoral may occur anywhere on earth; it may occur in any restaurant, or in any parlor, and yet it might be simply an isolated instance, and the proprietor of such cafe or parlor would not be cognizant of it and would not be chargeable with the offense that is committed there. And the jury will have to judge, it seems to me, whether or not this evidence has sufficient weight to determine that the defendants knew that such a thing would occur. It is a question of weight and not of materiality, and if there is a special instruction needed upon the subject, after what I have said, I will have to give it to the jury, because I think it is a question of weight rather than materiality.

MR. ROGERS: Might I interrupt your Honor for a moment?

THE COURT: Yes sir.

MR. ROGERS: I do not differ from your Honor's view at all. I think it is the view I tried to express, but your Honor expressed it more succinctly than I did. But my position is this: These defendants cannot be bound by isolated instances which, as your Honor just has observed, might occur in any circumstance. If, however, they placed this young lady intentionally and made no protection for her, gave her no opportunity to protect herself against those matters, that, as your Honor observes, is for the jury to determine whether they are bound by these matters,

(Testimony of Sallie Margaret Claxton.)

and as your Honor observed, it is a matter which the jury may consider, whether or not it does bind the defendants.

I might say there might be instances of solicitation—I can imagine instances of solicitation which would bind the defendants if they occurred. But I think counsel's question as it was put, would have a tendency to bind the defendants to matters which they were not in any wise responsible for, and if your Honor thinks that may be governed by special instruction, I submit I think possibly any harm that might come from the admission of immaterial matter, might, perchance, be obviated by such an instruction.

It is not charged in any wise that these defendants were guilty of any solicitation, and that they should be bound by isolated instances. It certainly is not the law. But I submit that counsel should reframe his question in such fashion, or in such manner as to come within your Honor's very plain ruling, which I think is a correct ruling.

MR. PALMER: I think, your Honor, that every man is presumed to intend the reasonable consequences of his acts, and if these defendants have been guilty of taking these girls and putting them in places where the reasonable consequences of that act they must be presumed to know that they will be solicited.

SALLIE MARGARET CLAXTON, recalled.

DIRECT EXAMINATION, resumed.

THE COURT: Repeat your question.

Q. BY MR. PALMER: Mrs. Claxton, at the time that you were employed in the Owl Cafe, were you

(Testimony of Sallie Margaret Claxton.)

while you were engaged in that employment on the dance floor, and about that house, at any time solicited by men to have illicit sexual relations with them?

MR. ROGERS: Objected to as incompetent, irrelevant and immaterial, no foundation laid; hearsay so far as the defendants are concerned; and the time and place and persons present not stated; no foundation laid, in that the defendants are not shown to have had any relation to the matter.

THE COURT: The objection will be overruled.

MR. ROGERS: Note an exception.

MR. PALMER: Read the question.

(Last question read by the Reporter)

A. NO sir.

Q. What was said to you, if anything, at the time you had the conversation with Dan Malone in Los Angeles about how much the expense was on a trip to Calxico?

MR. ROGERS: That is objected to upon the ground that no foundation has been laid for it; it is leading and suggestive. I will not object, except on the part of other defendants, for the lack of foundation to a question which would show what did Mr. Malone say, but it is leading and suggestive.

THE COURT: The objection will be overruled.

MR. ROGERS: Note an exception.

MR. PALMER: Read the question.

(Last question read by the Reporter)

A. Why, Mr. Malone never said.

Q. Was anything said to you by Mr. Fabian about the cost of a trip?

(Testimony of Sallie Margaret Claxton.)

A. No sir.

Q. Nothing was said to you at all by anyone about how much it would cost you to go?

A. No sir; they never even told me the depot that I went at.

Q. Did you sign a written contract with them?

A. After I was ^{sent} down there, yes sir.

Q. And where is that contract?

A. Why, I really don't know.

Q. BY THE COURT: Did you have a copy of it?

A. I think I did. I am not—

Q. What became of it?

A. I am not sure I had one, or not. If I did, I lost it or destroyed it, because I never thought anything more about it.

Q. BY MR. PALMER: Who signed that contract with you?

A. I don't know whether it was Mr. Malone or Mr. Fabian.

CROSS-EXAMINATION (P. 83 Transcript)

Q. BY MR. ROGERS: Now, was there anything further said by any of the defendants concerning your going down there, any solicitation made for you to go, or any inducements held out to you in any way, except what you have given?

A. No sir.

MR. PALMER: We would object—

MR. ROGERS: I beg your pardon.

THE COURT: Proceed, Mr. Rogers.

Q. BY MR. ROGERS: Then how long after you spoke to these men was it that you went?

(Testimony of Sallie Margaret Claxton.)

A. About a week, I think.

Q. About a week. Did you communicate with them, and tell them you were coming?

A. No sir.

Q. You went alone?

A. Yes sir.

Q. Did anyone take you to the train?

A. No sir.

Q. Or accompany you on the train?

A. No sir.

Q. Did anyone meet you when you got there?

A. No sir.

Q. When you got there, I believe you said you merely inquired the way to the hotel?

A. From an old man, an old Mexican man.

Q. Did anyone accompany you across the line?

A. No sir.

Q. Did anyone take you into Mexicali?

A. No sir.

Q. You walked over yourself?

A. Yes sir.

Q. Then you rehearsed that afternoon?

A. Yes sir.

Q. What did you rehearse?

A. Dancing numbers and the music to the songs.

Q. Now, "Dancing numbers," what do you mean by that? Do you mean show dancing?

A. Certainly.

Q. You had done that before? A. Yes sir.

Q. And had sung before in public places?

(Testimony of Sallie Margaret Claxton.)

A. Yes sir.

Q. Was there any special book given you—that is, any sort of a play read at that time for you to—

A. No sir.

Q. You were told what numbers you were to sing?

A. We stood at the piano and learned the songs off the music.

Q. You stood at the piano and learned the songs off the music? A. Yes sir.

Q. Then the director, or Mr. Fabian, had the songs written out and played them for you?

A. They bought the music and put it on the piano, and the piano player played it there.

Q. The piano player played it and you learned it there? A. Yes sir.

(Page 95 of Reporters Transcript) Q. Were you told anything about your conduct by any person, what you must do, and how you must conduct yourself?

A. No sir. I was told that nobody would bother me and I would have protection.

Q. You would have protection? A. Yes sir.

Q. Who told you that? A. Mr. Fabian.

Q. And where was that said to you?

A. At the front of the Regal Theater.

Q. And as a matter of fact, when you got down there, was anything said about your coming back over onto the Callexico side each night?

A. That I must come right straight across the line and not stop. I ate over in Mexicali, and as soon

(Testimony of Sallie Margaret Claxton.)

as we had our dinner, we should eat alone, and come right straight across the line alone.

Q. Then you went over to the cafe for your meals?

A. Yes sir.

Q. When was your dinner served you?

A. We had dinner at 6 o'clock, and then we had lunch at 12 o'clock, and then I ate just after I got out.

Q. Just after you got out? A. Yes sir.

Q. And where did you eat?

A. I don't know the name of the cafe; right next door to the theater.

Q. Well, it is managed by the same people?

A. Yes sir.

Q. Owned by the same people? A. Yes sir.

Q. And at that time, you say you were told that you must come right straight back over to the California side? A. Yes sir.

Q. Were you told anything about your conduct with respect to men, what you must do with respect to them, and what they would insist upon your doing?

A. Yes sir.

Q. What was it?

A. That if any man insulted us, we would tell him that we was not there for that purpose, that there was other people, and never to make a date with a man either in the theater or out, or on the American side.

Q. Or on the Mexican side, either? A. No sir.

Q. Not to make a date. By that, you mean an appointment with a man? A. An appointment.

Q. Now, during the time you were down there, did

(Testimony of Sallie Margaret Claxton.)

you make any appointment with any man? A. No sir.

Q. Did you commit any act of debauchery or immorality at that time at all?

MR. PALMER: We object to that question, your Honor, because it calls for a conclusion of the witness, and is asking for an answer to the very proposition that the jury is trying.

THE COURT: It looks to me, Mr. Rogers, that it is calling for a conclusion of the witness. I think the proper thing is to let her state what she did. You may ask her leading questions.

Q. BY MR. ROGERS: With respect to any sexual relations with a man, either on the Mexican side or the American side while you were down there, did you have any such relations? A. No sir.

Q. Were you at any time approached or solicited in any way by any of these defendants, or anybody connected with the Owl Cafe?

A. No sir.

Q. As a matter of fact, you have said you were told if any man said anything to you that you were to say certain things. As a matter of fact, were you told anything about any protection that would be afforded you? What was said about that?

A. I don't just understand you.

Q. Well, I mean to say, state whether or not you were told anything about being furnished with an escort back and forth, or anything of that kind?

A. No sir; we were just told to tell them not to bother us.

Q. Not to bother you. Now, at any time during

(Testimony of Sallie Margaret Claxton.)

your engagement over there, did you ever go back of your dressing room? That is, to the rear?

A. No sir.

(P. 99 of Transcript) Q. You said you were not permitted to approach any of those tables.

A. No sir.

Q. You were not permitted to gamble in any way?

A. No sir.

Q. Or to go up where the men were?

A. No sir.

Q. Were you permitted to drink at the bar?

A. At the back end here.

Q. Back end here?

A. Right back there, yes sir.

(P. 102 of Transcript) Q. Now, with respect to that dancing, what persons danced there? State whether or not people came in, persons, parties, from the valley, and parties from outside that you didn't know, come in and dance? That is, women and men come together, take dinner, dance, and go away; things of that sort?

A. Yes sir.

Q. Describe the way the people came in there.

A. Well, they came in and they looked as if they had been traveling. As if they had just come over sight-seeing, some with automobile caps, some of the women had, and men with caps.

Q. And people from the valley there?

A. They looked as if they were traveling.

Q. And they would dance there? A. Yes sir.

(Testimony of Sallie Margaret Claxton.)

Q. Now, did you ever see meals served to these people? A. Yes sir.

(P. 103 of Transcript) Q. Now, let me ask you, as a part of the evening's entertainment, you, as a chorus, sang. Now, did any of the girls sing separately, by themselves? A. Yes sir.

Q. Solos, as it were? A. Yes sir.

Q. And dances? A. Yes sir.

Q. You did that, did you?

A. No, I did singles.

A. ~~Yes, sir.~~

Q. By singles, you mean to be alone? A. Yes sir.

Q. And others of the chorus did? A. Yes sir.

Q. Now, did you have any moving pictures?

A. Yes sir.

(P. 104 of Transcript) Q. While the moving pictures were being displayed, state whether or not there was any dancing, or anything of that kind going on.

A. Sometimes you could dance while the orchestra was playing.

Q. While the orchestra was playing? A. Yes sir.

Q. Were you told by any of the defendants, or by any person connected with the cafe, that you should dance, or that you were compelled to dance, or anything of that kind, or directed, or was it left entirely to your choice?

A. It was left entirely to our choice; we could or we could not.

Q. At any time was any direction given you about

(Testimony of Sallie Margaret Claxton.)

whether you were compelled to drink with men, or not?

A. No sir. We was not to drink any more that we could possibly help.

Q. Were you allowed to drink anything except soft drinks and beer? A. No sir.

Q. What were you told about the rule with respect to your drinking?

A. We could only drink beer, or soft drinks. They wouldn't serve anything else but that.

Q. They would not serve anything but that. Now, something has been said about some women practicing prostitution. You may state whether or not the presence of those women there on your association—you may state what the effect upon yourself, upon your view of things, and upon your desire to commit acts of debauchery, or not, your observation of these women had.

MR. PALMER: We object to that, if the court please, for the reason that it is incompetent, irrelevant and immaterial, calling for a conclusion of the witness, and takes to draw from the witness testimony that is the very point in issue in this cause.

MR. ROGERS: Possibly my question is not framed as well as I would like to frame it.

THE COURT: You may ask a leading question.

MR. ROGERS: I beg your pardon, sir.

THE COURT: You have the right on cross-examination to ask leading questions.

Q. BY MR. ROGERS: At any time, did your observation of any of these women who were prostitutes, or you supposed were prostitutes—as a matter of fact,

(Testimony of Sallie Margaret Claxton.)

did your observation of them lead you to desire to commit any acts of debauchery, whatever?

MR. PALMER: Now, we object to that, if the court please, as calling for the very point in issue, incompetent, irrelevant and immaterial, calling for a conclusion of the witness.

THE COURT: I will hear from you Mr. Rogers, if you want to argue it.

MR. ROGERS: My view is this, sir: By counsel's kind permission, I was able to speak to this lady during the noon hour, and from my conversation with her, I desire to bring out from her her statements, if so I may, that her observation, whatever she may have seen of the women who were prostitutes, so far as leading to any acts of debauchery on her part, leading to any acts of immorality on her part, had directly a contrary effect, and that she was as safely cared for, that she was permitted at no time to indulge in any acts of debauchery, and had no temptation, but so far as her observation of those things were concerned, her tendencies were directly to the contrary; she did not in any way by her association with these women, her observation of them, such association as the Government seeks to prove,—she was not in any wise affected, so far as her observation of the world and her views of the world are concerned.

Now, the purpose of the Government in introducing this evidence of these associations with these women is to show that these girls themselves were morally affected; they were morally tainted. they come in contact with leprosy, and therefore have caught it. I don't

believe they contend that any of these girls indulged in prostitution, or were induced to, or that there was any seeking that they should, but, nevertheless, their association with these women was that they would become immoral themselves.

My idea in bringing it out, is by their own statement that they have not the effect that the Government desires to show. Now, they are asking the jury to determine, from producing evidence that Mrs. Claxton did come in contact with women of ill-repute, that would have an effect of producing immorality on her part, because that is the law under the Athanasaw case, under every other case so far, and has been held to relate to the character of the person transported, and not to the general character of the world at large, not to acts of debauchery committed by other persons, but that it had the effect upon the individual transported.

Now, if the Government seeks to deduce from this evidence, and seeks to have the jury find from this evidence that Mrs. Claxton was affected by her surroundings there, I think I have the right to show from her, from her own lips, so far as that is concerned, that she was not affected morally, or to her detriment in any respect. They seek to have this jury say that because Mrs. Claxton was there, she was morally tainted, morally affected, morally injured, and I think she is the best judge of that herself. I think she can say whether or not any association or act that she did, or that she saw there, not only had no ill-effect upon her, but possibly, perchance, it had a better effect than the Government contends for.

Now, they claim that that is what they want to show,

that these women were injured. That is all they can show under the law, that these women transported were transported for sexual immorality, as respects herself. I have the same right to show from her that she was not affected by these sights, as I have to show that she committed no acts of sexual indiscretion while she was there.

MR. PALMER: Now, if the court please, in that Athanasaw case that the gentleman has recited, the court there holds that where a woman is transported to a place and put in a position where naturally, according to the usual course of events, she is subjected to association with prostitutes? and some things of that character, that that is a violation of this law, because it tends to debauchery, and for counsel to have this witness testify that she cannot see and does not know that she has been affected will in any wise tend to prove or disprove anything in the case, because the women have been there and seen the things she saw and went through the experiences that she did, does not know what effect it has had upon her; she does not appreciate what effect it had upon her. And it is not the question what effect it did have on her, but the question, did it have the tendency, was there the tendency, was she exposed to the danger that this law is made for the purpose of preventing? That is the proposition that this jury is to try. The question is whether this woman was put in a position by these defendants where these defendants knew,—they are presumed to know,—that she was injured, and that she was thrown in surroundings that would naturally debauch her mind, and where she became acquainted

with the condition of prostitutes, where she was associated with men prostitutes and women prostitutes in the closest way socially, and it cannot make any difference what this witness might say about it. It cannot affect the issues here, because it is for the jury to determine whether such conduct, whether such acts have the tendency to lower and debauch any person that is exposed to them.

And I daresay my friend himself, if he were thrown in like surroundings, would be affected by such surroundings. I will say my friend cannot get on a train and travel three days through the old south without coming out and eliminating his r's and making his a's nice and broad. It is the thing we can't control. It is the unconscious thing that comes in and destroys. It is the thing that overthrows, and it is the very thing that is to be tried by this jury; it is that this woman was subjected there to the temptations, to the sights, to the horrible conditions as she has detailed them to this jury, and for her to say that has not affected her in any way is just merely trying to say what she has been led perhaps to say in her talk—

MR. ROGERS: Oh, no, I beg your pardon; that is not called for.

MR. PALMER: And at the time, your Honor, that the witness testifies to that thing, she is testifying to the very proposition that is to be tried by this jury, and it is for the jury to find whether or not the acts proven, the surroundings, the circumstances and all, would have the effect of debauching; it is for the jury to determine, and not for this witness.

MR. ROGERS: I agree with counsel that it is for

the jury to determine, if your Honor pleases; I quite stand with him on that proposition, but as an element which they should consider in making that determination. They have the right for this young lady in her own protection, for her to say what the effect upon her was. They may not believe her; that is true. They may think, as counsel does, that she does not know how it affected her. And yet, as a part of that she has the right to say just what happened and just how she regarded things, and just whether she had been in the chorus business for some time, how she regarded these things, how it affected her, how it has been since, and how she has looked at those things.

As I say, counsel says it is the very thing to be determined; that is true; that is what the jury is here for, and yet as a part of their consideration they have a right to hear this young lady say for herself.

THE COURT: Well, now, if the charge were that she was taken there for the purposes of prostitution, it would not be necessary to prove that she actually gave herself up to prostitution. If she was taken there for the purpose, I apprehend that she would not be permitted to testify that she had no inclination. But in this Athanasaw case that you both referred to, somewhere in the case the court uses the expression that if the girl had not been of strong determination, or words to that effect, her surroundings might have induced her to fall.

MR. ROGERS: I would like to read some parts of that to your Honor; if your Honor is founding his views upon that case. I would call your Honor's attention that the Athanasaw case was in this condition : the

girl was 16 years of age; she was taken there by one of the proprietors; the proprietor that night, on her arrival, told her that she was to receive no other man but himself, and that she was to be his girl. Your Honor will find that in the decision.

THE COURT: Yes, it is here.

MR. ROGERS: And that he sought intercourse with her—that is the Athanasaw case—he sought intercourse with her that night. Why, naturally, one could not stand in the presence of any man who understood life at all and contend that is not an act of debauchery. We have no such thing here. And my view is that the Athanasaw case is directly in point, as showing in that case one of the proprietors upon this 16 year old girl, an absolutely innocent girl with no knowledge of life, no knowledge of conditions, on experience, never been in a place or theater before, nor in there, the proprietor looked her up, sought her out, told her not to receive the attentions of anybody else who tried to see her, that she was his girl, and that he would have pleasure with her. It seems to me that is a different matter.

MR. PALMER: Mr. Rogers, if you will permit me to interrupt to read from the Athanasaw case. I read from page 331. It says, "The language of the statute is directed against the transportation 'of any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or give herself up to debauchery, or to engage in any other immoral practice.' "

"The instructions of the court were justified by the

statute. It is true that the court did not give to the word debauchery or to the purpose of the statute the limited *definiting* and extent it contended for by defendants, nor did the court make the guilt of the defendants to depend upon having the intent themselves to debauch the girl or to intend that someone else should do so."

THE COURT: That is the point that I had in mind.

MR. PALMER: (Continuing reading)

"In the view of the court the statute had a more comprehensive prohibition, and was designed to reach acts which might ultimately lead to that phase of debauchery which consisted in 'sexual actions.' The general expressions of the court, however, were qualified to meet and not go beyond the conduct of the defendants. The court put it to the jury to decide whether the employment to which the defendants called the girl and the influences which they surrounded her tended 'to induce her to give herself up to a condition of debauchery which eventually and naturally would lead to a course of immorality sexually.' That question, the court said, the jury should determine, and further: 'You have heard the testimony in the case in regard to the circumstances in which she was placed. You have viewed the scene where she was employed. You have examined by the testimony and your observation what was the character and what was the condition or influence in which the girl was placed by the defendants. Was or was not it a condition that would necessarily and naturally lead to a life of debauchery of a carnal nature relating to sexual intercourse between man and woman?' The plan and place justified

the instructions. The plan might have succeeded if the coarse precipitancy of one of the defendants and the ribaldry of the habitues of the place had not shocked the modesty of the girl. And granting the testimony to be true, of which the jury was the judge, the employment to which she was enticed was an efficient school of debauchery of the special immorality which the defendants contend the statute was designed to cover."

THE COURT: Now, in that case this girl testified that she was in a box and some boys came in there, four boys. They were smoking and cursing and drinking. (Reading) "I sat down and the boys asked me what was the matter; I looked scared. I told them I was ashamed of being in a place like that; and Arthur Schlemann, one of the boys, said he would take me out. The others all insisted on my staying and said I would like it when I got broke in. I tried to go out with Schlemann, but a boy named Gilbert pulled me back, saying 'Let that cheap guy alone.' Schlemann said he would send a policeman, and in about fifteen minutes Mr. Thompson and Mr. Evans came in for me."

Now, in this Athanasaw case the girl was permitted to testify that she was ashamed, and the court comments upon the fact of what was done there, the solicitation of the defendant for permission to visit the room of the girl and sleep with her, and the conduct of these boys was such that it shocked the girl to such an extent that she was ashamed. Now, I presume the object of the Government is to show that these women were not shocked when they were taken to this place. Now, whether they were shocked or ashamed

would depend upon the previous mode of life, whether they had been used to such things of that kind and knew what they were going to, and all that sort of thing.

I have held in this Mann Act it does not make any difference what the character of women is where debauchery or prostitution is engaged in; if they are taken there for that purpose, regardless of their character, it is a violation of the Act. Now, if these girls were taken down and were not shocked, were not ashamed, had power to resist, if there was anything to resist, the question is, is it proper for the girls to testify, the witness to testify, whether or not she was ashamed or shocked, whether or not her ideas of those conditions down there were such as to lead her away from that life or to it. It is more or less like the witnesses testifying, to some extent, concerning their intent. I might say I am puzzled about the question.

MR. ROGERS: My view, if your Honor pleases, if I may aid your Honor by—

THE COURT: Now, suppose, Mr. Rogers, that these girls taken down there were prostitutes, that sort of a life would not have an effect upon their ideas, and yet at the same time it would lead to that sort of thing. You take a pure girl down there, one that did not have any knowledge of the world,—suppose this 16 year old girl had been taken into such a place?

MR. ROGERS: Well, I will address myself just to the idea that your Honor has. It is apparent from this witness, a witness for the Government, that she was a professional entertainer, that as a part of this institution, as a part of this concern down there, there

was, if your Honor will permit me to divert a moment—there were other things, such as a restaurant, such as playing games, such as dancing, such as entertainment by moving pictures, such as entertainment by a chorus. I purpose to go on and show that there were other acts of an entertaining nature, a vaudeville show, and that these girls were a part of the vaudeville show, and that they were allowed—not induced or restrained—I think she has testified to that—to dance with men if she desired, not told that she must, but she could if she desired, but she must not drink anything except beer or soft drinks, as they are called, and that she must conduct herself in a certain way. Now, the whole tendency of the Act, the whole tendency of the Athanasaw decision is to put the question in a small compass, was she transported for purposes of debauchery or prostitution? No, she says not. She says she was told she must not. We have shown a contract in which she agreed she would not meet men. She says she did not meet men. Now, the question is, was she transported for debauchery in such a way as affected her? Did the harm that was done to this girl—in the Athanasaw case there was an attempt to do something that did not happen. Circumstances and the intervention of the Almighty probably prevented it. In this case the girls have the right to say that they knew what they were going there for. They were going there as entertainers. They went there with a certain idea in mind. Everything that was told them was made good, that they were protected, that they were not asked to do anything beyond what they went there for *namely*, entertainment; that at no time did they step over the

line of morality, and that they came away as good as they went there. Now, as a part of the testimony which the jury may consider in that behalf, we have the right to have Mrs. Claxton tell her own state of mind. Now, if they could prove, if your Honor suggests, if these women were prostitutes and were taken down there for the purposes of prostitution, then we would come under another wording of the Act, another prohibition of the Act, which is against prostitution or the purposes of prostitution. That is eliminated. The Government does not contend that these women were taken there for that purpose. It does not contend that any of the women indulged in that. And I think the Government, from their own witnesses, is compelled to admit that every safeguard in that line were thrown about these women; they were protected.

Now, it is not with the purview of the Athanasaw decision to show, just as shown here, what her state of mind was. Now, in this Athanasaw decision, which I think is given as to the effect it had upon the girl, and how she was shocked, or how it changed her mind, if it might have so done, and what the natural outcome and condition of things was after all these matters had transpired. So it seems to me that in this case we can controvert their contention by showing from the girl herself what the effect was. Now, if your Honor pleases, suppose that the Government were claiming that because of these acts which this girl saw, because of these things which she did, she did eventually go to a life of debauchery or prostitution, they would be able to show that, yes sir. If they contend that these acts tended in that direction, if they did so

establish themselves, they would be able to show it, that they had that tendency. They contend that they did those things. If they were true, they might have. Now, are we not at liberty to show the contrary? It seems to me that the converse of the proposition ought certainly be true.

THE COURT: You are going to show that did not have any particular influence on this particular witness?

MR. ROGERS: Precisely so.

THE COURT: And with the situation surrounding there?

MR. ROGERS: With respect to all the witnesses named in the indictment, and what we produce, we expect to show the same thing.

THE COURT: That is the way I understand it.

MR. PALMER: There is one other phase, if the gentleman will pardon me —

MR. ROGERS: Yes sir.

MR. PALMER: —to the issue that ought to be called to your Honor's attention. This is a charge of conspiracy, and the accomplishment of the offense is not necessary to make out the offense. I mean the accomplishment of the offense that the conspiracy charges would have been performed.

THE COURT: Well, that, Mr. Palmer, necessarily involves the question of their surroundings down there and the situation of what influence it would have on the morale of the girls that were taken there. Whether or not it would necessarily lead to a life of debauchery.

MR. ROGERS: Now, in this Athanasaw case, if your Honor will permit me just a moment—(reading) “The instructions given by the court are as follows:—”

(Testimony of Sallie Margaret Claxton.)

THE COURT: Yes. It is not necessary to read that. I have read it three or four times since this trial commenced. The gist of the instruction is down there. So far as this question is concerned, was or was not it a condition which would necessarily and naturally lead to a life of debauchery of a carnal nature in the sexual intercourse between men and woman.

MR. ROGERS: Yes, Then, necessarily and naturally, she has the right to say.

THE COURT: Then, whether or not in the opinion of this witness it would throw any light upon it, simply the effect it had upon her, would be simply her opinion about it. At the present time I will sustain the objection. If I change my mind later, I will let counsel know.

MR. ROGERS: Enter an exception.

(P. 121 of Transcript) Q. Have you committed any acts of debauchery or immorality of any kind?

A. No sir.

Q. Now, so far as the dancing upon the floor was concerned, counsel spoke to you about what dances. You did, as a matter of fact, dance. Did any of these defendants or anybody ever ask you to dance with any particular man? A. No sir.

Q. Were you permitted to choose yourself the men that you danced with? A. Yes sir.

(P. 122 of Transcript) Q. At any time did you ask any man to drink with you while you were there?

A. No sir.

(Testimony of Sallie Margaret Claxton.)

Q. I will ask you if you asked any man to buy liquor for you? Did you ever do that?

A. No sir.

Q. You never asked any man to buy any liquor for you at all?

A. No sir; I asked them to dance.

Q. Counsel spoke of the kind of men who were permitted on the dance floor. Did you ever see any man who was intoxicated permitted on the dance floor?

A. No sir.

(P. 125 of Transcript) Q. Were you allowed to receive any men in the dressing room?

A. There was no one allowed in the dressing room except the ^{girls} ~~grils~~ that worked there, but I didn't dress in that dressing room.

Q. Where did you dress?

A. Right here back of the orchestra, on the other side.

Q. On this side? A. Yes sir.

Q. What girls dressed in there the same time you did?

A. Why, Grace and Alma—

Q. Well, Grace is Mrs. Fabian?

A. Yes sir.

Q. The wife of the director of the chorus?

A. Yes sir.

Q. And by the way, did Mrs. Fabian, the wife of the director of the chorus work with you?

A. Yes sir.

(Testimony of Sallie Margaret Claxton.)

Q. During all of the time that you were there?

A. Yes sir.

Q. And did the same things that you did?

A. Yes sir.

Q. Alma, you speak of her, what is her other name?

A. Person.

Q. Person. Is she a married woman?

A. No sir.

Q. Did you know her before? A. Yes sir.

Q. When did you know her?

A. At the Regal.

Q. And what was she at the Regal? A. Chorus girl.

Q. And she did the same things that you did?

A. Yes sir.

Q. Did any of these defendants at any time speak to you about your doing any immoral thing, having any sexual relations with any man?

A. They told us we should never make a date, or anything, with a man.

(P. 128 of Transcript) Q. What was said to you with reference to your conduct? What you were to do if any man did, as a matter of fact, make any improper proposals or suggestions to you as respects reporting it?

A. Tell them that we was not there for that purpose, that there was other people.

Q. And you said, however, that no one ever did make an improper proposal to you?

A. No one ever said anything to me.

MR. ROGERS: That is all.

(Testimony of Sallie Margaret Claxton.)

REDIRECT EXAMINATION

Q. BY MR. PALMER: Mrs. ^{Claxton} Saxon, what amount of money did you receive at the end of the first week of your service in the old place from your percentage on the sales of drinks?

MR. ROGERS: Objected to as incompetent, irrelevant and immaterial, not within the issues.

THE COURT: Objection overruled.

A. Why, we cashed in our checks every night.

Q. BY MR. PALMER: Do you know how much you got for that week?

A. No sir, I don't; I never kept account of it.

Q. Do you know how much you got while you were there, the two weeks?

MR. ROGERS: The same objection.

A. No, I really couldn't say.

Q. BY MR. PALMER: What was the largest amount that you got at the end of the day during the first week while you were at the old place from the percentage on drinks?

MR. ROGERS: May my objection follow this line of interrogation?

THE COURT: Yes, sir.

MR. ROGERS: And my exception, also?

THE COURT: Yes.

MR. PALMER: Read the question.

(Last question read by the reporter)

A. Eleven dollars, I think it was—eleven or twelve; somewheres in there.

Q. What was done with the men who drank in

(Testimony of Sallie Margaret Claxton.)

that part of the house when they become intoxicated?

MR. ROGERS: Objected to as assuming a fact not in evidence, irrelevant, incompetent and immaterial, no foundation laid, no showing that any man did become intoxicated.

THE COURT: Objection overruled.

MR. ROGERS: Exception.

THE COURT: Answer the question.

A. I don't know; I guess they must have went home. There was not anybody back in there. They never stayed until they got intoxicated.

(P. 130 of Transcript) Q. Now, Mr. Rogers asked you about the situation of the dressing room, I understand you to say that the dressing room that the girls used when you were there at the old place was situated at the back of the dance hall and just to the right of the orchestra?

A. But it did not come out on the floor like that did.

Q. It was behind the orchestra?

A. There was a hall, there was a doorway right there; there was no door on it, and you stepped inside of that little door into the hallway, and your dressing room was right to the left, or right there.

Q. (Indicating on the diagram on the blackboard.) Behind the orchestra? Here?

A. Yes, sir; there was a wall, and then there was a dressing room.

Q. Now, there was a hallway in here?

A. Yes, sir.

(Testimony of Sallie Margaret Claxton.)

Q. And then here was a door that opened from the hallway into the dressing room?

A. Yes, sir.

Q. And then this hallway on down—well, what was down there?

A. I don't know; I never was back there.

Q. Don't you know that is the place where the cribs were?

A. I know I seen women going back there.

(P. 132 of Transcript) MR. PALMER: Q. Now, the hallway that you went into from the dance floor just before you entered your dressing room had other rooms along it, did it?

A. It was a big long hall, and there was women that went down this hall, and I never went back there, so I couldn't swear what was back there.

Q. Did you see men going back there together?

A. Yes, sir.

Q. Did you see them going into the rooms together?

A. No, sir, never seen them go into the rooms, because I was never back there.

(P. 135 of Transcript) Q. Your instructions, now, from whom did you get those, in regard to if men made any solicitations to you?

A. Mr. Fabian.

Q. Mr. Fabian. Now, just what did he say to you?

A. He said that if anybody insulted me—he said that I should never make a date with a man and

(Testimony of Sallie Margaret Claxton.)

never lead a man on that I would meet him, and if a man ever insulted me I should excuse myself and tell him I was not there for those purposes.

Q. And what did he say about their being others there to look after that?

A. That there was other people there for that purpose, for me not to make a date, or anything.

Q. Now, did you follow those instructions?

A. I did.

Q. Did you refer any man that suggested such a thing as that to these women?

A. No, sir, I never talked to any of the women.

Q. I know, but you referred the men to those women?

A. No.

MR. ROGERS: No, I object to that—

THE COURT: She answered No. go ahead.

A. No man ever said anything to me.

Q. By MR. PALMER: No one ever said anything to you about it? A. No sir.

Q. Did Mr. Malone ever say anything to you about that?

A. Mr. Malone never had anything to say to me.

Q. Mr. Chartran say anything to you about it?

A. No sir.

Q. Mr. Beyer?

A. No sir; I never spoke to Mr. Beyers.

Q. Never spoke to him?

A. No sir.

MR. PALMER: That is all.

TESTIMONY OF ALMA PERSON for the Gov-

Alma Person.)

(Testimony of ~~Sallie Margaret Claxton.~~)

ernment, Page 147 Reporter's Transcript. Alma Person, called as a witness on behalf of the prosecution, being duly sworn, testified as follows:

DIRECT EXAMINATION

My name is Miss Alma Person. I am 18 years old. I am acquainted with Warren Fabian. I made his acquaintance when I worked as a show girl at the Regal Theater in the City of Los Angeles. I am acquainted with F. B. Beyer and made his acquaintance in Calexico. I was one of the first girls to go down there. I went down with Mrs. Fabian, Anna Gregory and Lee Alexandria. Mr. Fabian was the first one who spoke to me about going to Calexico.

(P. 149 of Transcript) Q. Now, what was said in that conversation, and who said it?

MR. ROGERS: Objected to as incompetent, irrelevant and immaterial, and hearsay.

THE COURT: Objection overruled.

MR. ROGERS: And no foundation laid. Exception.

A. Mr. Fabian was telling me about the place down there, and asked me if I would want to go down.

Q. BY MR. PALMER: What did he tell you about it?

A. Well, he just told me—explained to me the whole place.

Q. Just tell me what he said; what did he say?

A. He said it was a dance hall and a gambling hall, and we had to work in the chorus, like entertainers down there.

Alma Person.)(Testimony of ~~Sallie Margaret Claxton.~~)

Q. As entertainers? A. Yes.

A. What did he say about requesting you to go?

A. Well, he said if I wanted to go, why I could go down. So I said I would go down.

(P. 151 of Transcript) Q. What was said by you and Fabian and Malone there about your going to Calexico, if anything?

A. Mr. Fabian said I wanted to go down, and Mr. Malone said it was all right, I could have the job.

(P. 152 of Transcript) Q. Do you remember about the date that you went? A. I don't remember.

Q. Do you know whether it was in March?

A. I think it was in March.

Q. What year? A. 1916.

Q. Last year, March, 1916? Now, what, if anything, was said to you, and by whom was it said, about how you should go?

MR. ROGERS: Objected to as incompetent, irrelevant and immaterial, and not binding on the defendants.

THE COURT: Objection overruled.

MR. ROGERS: Exception, please.

THE COURT: Answer the question, please.

A. I didn't understand that.

MR. PALMER: Well, I will change the question.

Q. Did Mr. Fabian or Mr. Malone tell you where to go to start?

MR. ROGERS: That is objected to for the same reasons—I beg pardon.

Q. BY MR. PALMER: (continuing) —or what did they say to you about that?

Alma Person.)

(Testimony of Sallie Margaret Claxton.)

MR. ROGERS: Objected to for the same reasons.

A. To go to Calxico? Q. Yes.

A. He said we were to go to Calxico, and live on the American side and work on the Mexican side.

Q. Was there anything said to you by either of those men about the station you were to go to, and when you were to go?

A. No, they did not tell us when; they told us when we did take a train to get off at Calxico.

Q. Was anything said to you about what railroad to go over, and when you were to start?

A. No, Mrs. Fabian took me; I went with Mrs. Fabian.

Q. How is that?

A. I went with Mrs. Fabian to the train.

Q. Went with Mrs. Fabian?

MR. ROGERS: I move to strike that answer out, because it is incompetent, irrelevant and immaterial and not binding upon the defendant, and no foundation.

THE COURT: Objection overruled, and motion denied.

MR. ROGERS: Exception.

Q. BY MR. PALMER: Now, did you receive any money at the station to pay your fare with?

A. Mrs. Fabian gave us the money.

MR. ROGERS: I object to that as hearsay, incompetent, irrelevant and immaterial, and not connected with the defendants. No issue is made on that, and no foundation has been laid, and I move to strike the

(Testimony of Sallie Margaret Claxton.) Alma Person.)
answer out. Please don't answer so rapidly. I would like to object occasionally.

THE COURT: Well, so far, the answer is immaterial. It does not relate to the defendants. She said Mrs. Fabian furnished the money.

Q. BY MR. PALMER: How much money did she give you?

MR. ROGERS: Objected to as incompetent, irrelevant and immaterial and not within the issues, and no foundation laid.

MR. PALMER: The indictment, your Honor, charges that these defendants and others were engaged in this conspiracy.

MR. ROGERS: That has not been proven. The fact it is charged does not make any difference.

THE COURT: Mr. Rogers, they could claim that Mrs. Fabian was in the conspiracy and one of the conspirators.

MR. ROGERS: I know they could claim it, if your Honor pleases, but they have ousted themselves from that claim by calling her to the witness stand a few moments ago. They know they cannot call a defendant.

MR. PALMER: She is not a defendant.

MR. ROGERS: And they must, of course, prove their conspiracy first. They cannot assume that because the indictment so charges, that a person is in a conspiracy, without any showing to that effect.

THE COURT: Well, I think it is material to show that she got the money from somebody else and did not pay her own way there, and if they can connect

Alma Person.)

(*Testimony of Sallie Margaret Claxton.*)

it up with the defendants, let them do it. The objection will be overruled.

MR. ROGERS: We except.

MR. PALMER: Read the question, please.

(Question read)

A. Ten dollars.

Q. How much, if any, did she give to Anna Gregory?

MR. ROGERS: The same objection.

THE COURT: Overruled.

MR. ROGERS: We except.

A. Ten dollars.

Q. BY MR. PALMER: Was she with you when you bought your ticket?

A. Yes sir.

MR. ROGERS: May my objection follow this whole matter?

THE COURT: Yes sir, you may have an objection and exception—an objection to all questions concerning the buying of this womans' ticket, and others by Mrs. Fabian, and to the ruling of the court an exception.

(P. 157 of Transcript) Q. Did you have a contract in writing in regard to your work there?

A. Yes sir.

Q. When was that made?

A. The day after I got there.

Q. At Calexico or at Mexicali?

A. I don't know where it was made out; I don't know which side.

(Testimony of Sallie Margaret Claxton.) **Alma Person.**)

Q. Was it made out in your presence? A. Yes sir.

Q. Have you a copy of that contract?

A. I think I have at home, in my trunk.

Q. In your trunk. Where is your home now?

A. St. George Hotel.

Q. In this city? A. Yes sir.

Q. I wish you would bring that in the morning.

A. I will if I can find it.

(P. 160 of Transcript) Q. When you went in there, where did you go to do your work?

A. We went through the gambling hall, and right straight back to the dance hall, up to the stage.

Q. BY MR. PALMER: When you got to the state—was there a stage in the old—

A. Not in the old place; we worked on the floor.

Q. Worked on the floor. Where was your dressing room there in the old place?

A. We went right through a little door, and as soon as we stepped in the door our dressing room was right off on the lefthand side.

Q. You went into a hallway?

A. Yes, we just stepped in.

Q. At the right of the orchestra?

A. I don't know.

Q. Where was the orchestra situated with reference to the front of the building?

A. Right in the back of the dance hall, in the middle.

Q. As far back as it could be?

A. Yes.

(Alma Person.)

(Testimony of Sallie Margaret Claxton.)

Q. On the back wall of the dance hall?

A. Yes sir.

Q. Did all the girls use one dressing room?

A. They did for a while, and then when we got too many girls they had another dressing room on the side of the dance hall.

Q. On the south—on the other side?

A. Yes, on the lefthand side.

Q. On the lefthand side. How many girls were there when you got there, in the chorus?

A. When I first went down there?

Q. Yes, in the chorus.

A. Just the four of us.

Q. Just four. Did others come soon?

A. Yes sir.

Q. Was there one there when you got there?

A. No sir.

Q. Who came then immediately after, to make the fourth girl? A. Lela Caville.

Q. And others afterwards came, did they?

A. Yes sir.

Q. Who others came there?

A. I don't remember their names.

Q. Was Viola Davenport there?

A. Yes sir.

Q. While you were there?

A. Yes sir.

Q. And she was one of the chorus girls and entertainers? A. Yes sir

Q. Did she have any special act?

A. I don't understand.

(Testimony of Sallie Margaret Claxton.) ~~Alma Person.~~

Q. Did she have any special act? Would she appear in any singles?

A. I don't remember if she did or not.

Q. Lela Caville, you say, was there? A. Yes sir.

Q. Was Alma Korst there while you were there?

A. Yes sir.

Q. Was Grace Claire there while you were there?

A. Yes sir.

Q. And Grace Fay? A. Yes sir.

Q. And Anna Gregory? A. Yes sir.

Q. And Vivian de Le Mar? A. Yes sir.

Q. And Daisy North? A. No sir.

Q. You don't know Daisy North? A. No sir.

Q. Now, you may tell the jury what you did there by way of entertainment at that place.

A. What we did, you mean? Q. Yes.

A. Well, we went to work at seven thirty, and we did an opening chorus.

Q. Did an opening—

A. Opening chorus.

Q. Chorus.

A. And then we got our street—our clothes on for the dance hall, and got out and danced; and they had pictures, and most of the girls did specialties.

Q. Did you do specialties? A. Yes sir.

Q. What was your specialty? A. Specialty dancing.

Q. Specialty dancing, sometimes called acrobatic dancing, is it? A. Yes sir.

Q. Acrobatic dancing. Now, how were you dressed when you went there in your chorus work?

Alma Person.)

(~~Testimony of Sallie Margaret Claxton.~~)

A. I don't remember.

Q. Did you dance in skin tights at any time?

A. No, we had kind of long dresses on.

Q. Long dresses, and knee length dresses at any time?

A. Yes, just below our knees.

Q. You never performed there then in tights?

A. No sir.

(P. 165 of Transcript) Q. BY MR. PALMER:
Miss Person, when is your birthday?

A. August 23d.

Q. How old will you be August 23d?

A. Eighteen.

Q. This next August, you will be eighteen August 23d?

A. Yes sir.

Q. What was in the front room there of that Owl Cafe?

A. A gambling hall.

Q. And what kind of gambling?

MR. ROGERS: If she knows.

MR. PALMER: Certainly.

THE COURT: Is there any controversy about what was there and what goes on there?

MR. PALMER: Yes, your Honor.

THE COURT: All right, proceed.

MR. PALMER. I don't know that there is any controversy between the plaintiff and the defendants.

MR. ROGERS: If this witness knows, if she has

(Testimony of ~~Sallie Margaret Claxton.~~) 'Alma Person.)
been permitted to—if she knows of her own knowledge,
I suppose she may testify to it.

THE COURT: I don't think she does. I think all she knows is hearsay, and what she has heard, as to the kind of games and the character of the games. I think counsel is possibly mistaken about some of the games, too.

MR. PALMER: I never was down there.

MR. ROGERS: Neither have I been down there.

Q. BY MR. PALMER: Miss Persons, were you permitted to be in the gambling part of the house?

A. No sir.

Q. Have you seen Mrs. Warren Fabian on the floor in the gambling part of the house?

A. No sir.

Q. Have you seen any women on the gambling floor of that house? A. Just slummers.

Q. How? A. Just slummers.

Q. By "slummers" you mean the outsiders that came to see the sights, is that it? A. Yes sir.

Q. BY THE COURT: Well, would the other women that were around there at the cafe be in the gambling room?

A. No sir, nobody that worked in the cafe.

Q. How is that?

A. None of the girls that worked in the cafe were allowed in the gambling hall.

Q. Well, there were other women about the Owl Cafe, weren't there besides the chorus girls; were there other women about there except those?

A. Yes sir.

Alma Person.)

(Testimony of Sallie Margaret Claxton.)

Q. That lived there? A. Yes sir.

Q. Were they in the gambling room?

A. No sir, they were not allowed in there.

(Page 169 Transcript) Q. Whom did you dance with? A. With the fellows.

Q. What fellows?

A. Well, the fellows in the dance hall.

Q. Those that wanted to dance? A. Yes sir.

Q. And did you ask men to dance with you?

A. Sometimes.

Q. And sometimes they asked you?

A. Yes sir.

Q. Did you have any arrangement by which you were to get anything upon the sale of drinks there?

A. Yes sir, we were to get a per cent.

Q. Forty per cent?

A. Yes sir, and fifty cents on Schlitz.

(P. 170 of Transcript) Q. BY MR. PALMER: Now, when you were dancing, was any effort made—did you make any effort to sell liquors?

A. No sir.

Q. Did you ever ask any man to buy any drinks?

A. No sir.

Q. How did you manage to get your percentage?

A. Oh, I would ask them to dance.

Q. How?

A. I would ask them to dance.

Q. And then after they danced, why, how would you get them to take a drink, if you did?

(Testimony of Sallie Margaret Claxton.) Alma Person.]

A. Because they knew if they danced they had to buy a drink.

Q. Oh yes; that was part of it, was it?

A. Yes sir.

Q. They knew when they danced, why they were expected then to buy drinks for you and for themselves?

A. Yes sir.

Q. Now, where were those drinks served from?

A. They were served in the dance hall.

Q. And where from? A. From the bar.

Q. Did you have waiters to come down there?

A. Yes sir.

Q. And bring the drinks. Was there a place at the bar where the girls were permitted to drink?

A. Yes sir.

Q. They would go with men there to drink?

A. Yes sir.

Q. At the bar?

A. Yes sir.

Q. They had a rail there where the girls put their foot up on, when they wanted to stand and drink?

A. Yes sir.

Q. Were there any women that were upon the floor of the dance hall besides the girls who were the chorus girls? A. Yes sir.

Q. How many?

A. I don't remember.

Q. Do you have any idea how many? A. No sir.

Q. Were there as many as a hundred? A. No sir.

Q. Fifty? A. No sir.

Alma Person.)

(Testimony of Sallie Margaret Claxton.)

Q. You don't know how many? A. No sir.

Q. What was their business?

A. I don't know.

Q. Did they dance on the floor at the same time you did? A. Yes sir.

Q. Did you receive any instructions from any one there in regard to men who solicited you, or if any man should solicit you for sexual relations what you should say? A. Yes sir.

Q. What were your instructions?

A. We were not allowed to take a walk or make any appointment with any fellows, and if they asked us anything out of the way, we were to tell them we were not there for that purpose.

Q. And what about others?

MR. ROGERS: I object to that as leading and suggestive, and I don't think it is competent.

Q. BY MR. PALMER: Was there anything further in regard to what you were to say? A. No sir.

Q. Do you know whether or not there were cribs immediately back of the dance hall?

A. I don't know; I never was back there.

Q. You were in the hall that led to those rooms that were back there, were you not?

MR. ROGERS: I object to that as calling for a conclusion of the witness and incompetent and leading and suggestive.

THE COURT: I overrule the objection.

MR. ROGERS: Exception.

A. We never went back that far.

(Testimony of Sallie Margaret Claxton.) Alma Person.)

A. BY MR. PALMER: But you went into that hallway to go to your dressing room?

A. Yes sir.

Q. You had to go into that hallway?

A. Yes sir.

Q. And your door was just the first door, was it?

A. Yes sir.

Q. After you stepped into the hallway?

A. Yes sir.

Q. And then there was a door right opposite that, was there, on the right?

A. Yes sir.

Q. Do you know whether that was a crib room?

A. I don't know; I never saw the door open, or nothing.

Q. Never saw the door open. Did you see women there that were practicing prostitution?

MR ROGERS: Objected to as calling for a conclusion or opinion, incompetent, irrelevant and immaterial, and no foundation laid.

MR. PALMER: I will change the question.

THE COURT: I think the witness has got a right to state how far she knows about it.

MR. ROGERS: We except.

THE COURT: Answer the question.

A. What is the question?

(Question read)

A. I didn't know what they were doing.

Q. BY MR. PALMER: Did you see women and men going together back into that hallway?

(Testimony of Sallie Margaret Claxton.) Alma Person.)

MR. ROGERS: The same objection as before made.

THE COURT: Objection overruled.

MR. ROGERS: We except.

A. Sometimes.

Q. BY MR. PALMER: Frequently, didn't you?

MR. ROGERS: Objected to as leading and suggestive.

A. I don't remember.

MR. ROGERS: And the same other objections I made.

Q. BY MR. PALMER: You knew there were women that occupied those rooms back there, didn't you?

MR. ROGERS: Objected to as leading and suggestive.

A. Yes sir.

Mr. ROGERS: Wait a minute, please, I am objecting.

THE COURT: The objection will be overruled, Mr. Rogers.

MR. ROGERS: We except.

Q. BY MR. PALMER: And those women came into the dance hall, did they? A. Yes sir.

Q. And danced with men there? A. Yes sir.

Q. And danced with men at the same time that the chorus girls were dancing with men? A. Yes sir.

THE COURT: Did they sit at the table and be served?

A. Yes sir.

Q. BY MR. PALMER: Did they serve drinks

(Testimony of Sallie Margaret Claxton.) Alma Person.)
there to those women when they had men with them, just like they did with the chorus girls, did they?

A. Yes sir.

Q. Did the girls have separate tables, the chorus girls and these other women?

A. The chorus girls never sat with any of the other women.

MR. ROGERS: What is that answer, please? I didn't hear it.

(Answer read)

Q. BY MR. PALMER: Were there certain tables there that were assigned for the chorus girls?

A. No special tables.

Q. How?

A. There was no special tables.

Q. You could take any table that was vacant; that was it, was it? A. Yes sir.

Q. And they did the same? A. Yes sir.

Q. So that if there were two sitting at one side of a table, why, any one else had the right to come and sit at the other side of that table; was that true?

MR. ROGERS: I object to that as argumentative and incompetent and irrelevant.

THE COURT: I think it is argumentative. The objection will be sustained.

Q. BY MR. PALMER: Was there anything to prevent—

THE COURT: Ask if there was any rule on the subject.

MR. ROGERS: The same objection.

Q. BY MR. PALMER: Was there any rule of

(Testimony of Sallie Margaret Claxton.) Alma Person.)
the house that provided that the women who came from the rear part of the house should not sit at the same table with the girls who were in the chorus?

MR. ROGERS: I object to that as incompetent, irrelevant and immaterial and she has said the chorus girls never sat with any of these other women that counsel has been speaking of.

THE COURT: Objection overruled. Answer the question.

MR. ROGERS: We except.

Q. We were not allowed to even talk to them, to the other women.

MR. PALMER: Just read the question.

(Question read)

A. Yes sir, that was the rule.

Q. That was the rule?

A. Yes sir.

MR. ROGERS: May I have the other answer? What was it? (Answer read as follows: "We were not allowed to even talk to them, to the other women.")

Q. BY MR. PALMER: You knew what the other women were doing there, did you?

MR. ROGERS: Objected to as incompetent, irrelevant and immaterial, and not within the issues, and no foundation laid.

THE COURT: What is the question?

(Question read)

THE COURT: The objection will be overruled.

MR. ROGERS: We except again.

A. Well, I knew in a way; I didn't know very much about it.

(Testimony of Sallie Margaret Claxton.) ~~Alma Person.~~

Q. BY MR. PALMER: That is, you never saw what they did?

A. No sir.

MR. ROGERS: That is objected to as argumentative, leading, suggestive, incompetent, irrelevant and immaterial.

THE COURT: Well, she has answered it. She said she didn't. I will overrule the objection.

MR. ROGERS: There is one little matter, while counsel is thinking about his question, that I would like to speak about. Your Honor has practiced in California, and you know in the state courts here we are, I believe, required to take exceptions. It annoys me, and I know it must annoy the Court and counsel, for me to be excepting. May I have a stipulation that following an adverse ruling I may have an exception entered, without specifically stating it, unless I have some special exception which I desire to take for some special reason, in order that I may not be continually annoying with the statement that we except, or something of that sort?

MR. PALMER: Yes, your Honor, I am perfectly willing to make such a stipulation as that.

THE COURT: All right.

MR. ROGERS: Very good. Then I will not speak again in the way of exceptions.

Q. BY MR. PALMER: Now, how many times have you been in Calexico?

A. Several times.

Q. And quite a while, and then go back?

A. Yes sir.

(~~Testimony of Sallie Margaret Claxton.~~) Alma Person.)

Q. When did you first quit?

A. I don't remember.

Q. How long after you had first gone down there?

A. A couple of months.

Q. Why did you quit?

MR. ROGERS: Objected to as incompetent, irrelevant and immaterial.

THE COURT: I think it is immaterial.

MR. PALMER: All right.

Q. Were you ever solicited there by any men that you were dancing or drinking with to have sexual relations with them? A. No sir.

Q. Never were talked to about that? A. No sir.

Q. Were you ever on the gambling floor there?

A. No sir.

Q. How much was the largest amount of money that you ever received for a day's work there, or your percentage?

MR. ROGERS: Objected to as irrelevant, incompetent and immaterial, and not within the issues.

THE COURT: I will overrule the objection.

A. I don't remember.

Q. BY MR. PALMER: What is the biggest one that you remember?

MR. ROGERS: The same objection.

THE COURT: Overruled.

A. I don't remember.

(P. 187 of Transcript) Q. By MR. PALMER: Before you went to Mexicali, had you practiced prostitution?

(Testimony of Sallie Margaret Claxton.) Alma Person.)

A. No sir.

(P. 188 of Transcript) Q. BY MR. PALMER: After you went to Mexicali, did you there in the Owl Cafe solicit any man or men to make a date with you? A. No sir.

CROSS EXAMINATION.

I have been a theatrical performer for six years, having experience up and down the coast at the Regal, Century theaters and cafes in Los Angeles. My specialty is dancing and singing. I met Mr. Fabian, one of the defendants, when he was in a stock company at the Regal Theater in Los Angeles, about six or seven months before I went to Calexico. Mr. and Mrs. Fabian were the first persons who spoke to me about going down to Mexico, and they told me if I wanted to go I could have a job. I went down to Calexico and stopped at the Hotel Virginia. I never received any male callers at my room at the Hotel Virginia. I never practiced any prostitution before I went down there, and have not practiced prostitution since I have been down there. My specialty at the Owl Cafe was to dance. I was never influenced by any person any way to dance with any particular man. The management never solicited me to have men drink. I was never instructed to associate with any man that I didn't want to.

(P. 194 of Transcript) Q. BY MR. ROGERS: Now, at any time did any man go to your dressing room, or were any persons allowed to go into your

(Testimony of Sallie Margaret Claxton.) Alma Person.)
dressing room while you were at the old place, or the new place, as a matter of fact?

A. No sir.

Q. What were your instructions concerning meeting or seeing men or having men talk to you, or anything of that sort?

A. We were not allowed to talk or make an appointment, or go out on a machine ride, or nothing with nobody.

Q. Did anyone solicit you at any time to do any immoral or indiscreet act?

A. No sir.

Q. Now, with respect to the women who danced on that floor when you were there, you have said that you were not permitted to talk with or sit at the same table with any of the women who were supposed to be in the back part of the house; that is, in the rooms rented back there. Were other women besides those women on the dance floor sometimes? I mean by that, did the people come from the valley around there, slumming parties, and women who came apparently with their parties or husbands, or things of that sort, and dance?

A. Yes sir.

Q. Have you ever been to, we will say, Nat Goodwin's Cafe, or the Sunset Inn, or places of that sort?

A. Yes sir.

Q. State whether or not the women who came there accompanied by outsiders, that is, women who were not employed about the place, or women who were not

(Testimony of Sallie Margaret Claxton.) Alma Person.)
of the sort counsel has been talking about, whether they were permitted to dance.

MR. PALMER: Now, we object to that, if the court please. I will withdraw the objection. Go ahead.

THE COURT: Answer the question.

A. Well, excuse me, I didn't remember.

Q. BY MR. ROGERS: Well, Miss Person, what I am getting at is this: that was a public dance floor.

A. Yes sir.

Q. And women came in from various quarters that were not employed there, or connected with the place in any way, or didn't have any relation or association with it at all.

A. Yes sir.

Q. And danced?

A. Yes sir.

Q. What sort of—what proportion of the dancing crowd consisted of people of that sort, that is, people who came in from the outside?

A. A good many.

Q. Was there a restaurant connected with the place? A. Yes sir.

Q. Did you live there at the restaurant? I mean, did you take your meals there?

A. Yes sir.

(P. 197 of Transcript) Q. Yes. Well, now, did other persons, that is, the parties that came from the valley, came from El Centro, Mexicali, Calexico, even Los Angeles, places like that, did they come there and

(Testimony of Sallie Margaret Claxton.) Alma Person.)
have dinner and then dance during their taking of the meals?

A. Yes sir.

(P. 199 of Transcript) Q. During any of your employment down there, we will say at the old place—I will pick that out—did you in any wise associate with or talk with, eat at the same table with, or drink at the same table with any prostitute?

A. No sir.

Q. Did any of these women whom counsel is calling prostitutes,—were any of these women speaking to you, did they speak to you or talk to you in any way?

A. No sir.

THE COURT: Gentlemen, I have in mind certain questions I would like to ask this witness.

MR. ROGERS: I would be more than glad that your Honor should.

THE COURT: If I ask anything either of you think should not be asked, you are at perfect liberty to object to it, and I will consider your objection.

MR. ROGERS: Very good sir.

Q. BY THE COURT: You knew there were women there who were prostitutes, did you, at the time?

A. I didn't know they were prostitutes.

MR. ROGERS: I object to calling for the conclusion or opinion of the witness if your Honor please. Her idea that they were prostitutes, I have no objection to your Honor inquiring for, but to characterize them as her knowing them to be such, I must ask your Honor—

(Testimony of Sallie Margaret Claxton.) ~~Alma Person.~~)

Q. BY THE COURT: Were there women there that were reputed to be prostitutes?

(P. 200 of Transcript) A. I didn't know.

Q. You didn't know?

A. No sir.

Q. There were women there that you were asked not to associate with?

A. Yes sir.

Q. Why were you directed not to associate with them?

A. I was never told.

Q. Never told why?

A. No sir.

Q. You knew these women roomed back of the cafe there, in back of the stage?

A. I didn't know where they roomed. I saw them go back there, but I didn't know if they lived there or not.

Q. You saw them go back there with men?

A. Sometimes.

Q. And you had an idea of the purpose for which they were going?

A. No sir.

Q. You did not. Now, did you feel ashamed by being brought in contact, as you were, with those women?

MR. ROGERS: I object to that, if your Honor please, "being brought in contact as you were," upon the ground that the witness has said she never spoke to any of them; she never sat with any of them, or ate with any of them, or drank with any of them.

(Testimony of Sallie Margaret Claxton.) Alma Person.)

(P. 201 of Transcript) Q. BY THE COURT: Taking that into consideration now, I ask you if you were shocked?

A. No sir.

Q. Had you previously been familiar with such sights anywhere else?

A. No sir.

Q. Or that kind of women?

A. No sir.

Q. You say you did not know what these women were doing?

A. No sir.

Q. How old are you?

A. 17.

THE COURT: I believe that is all I desire to ask.

Q. By Mr. Rogers: Miss Person, do you remember saying to Mr. Malone once, while you were there, Mr. Malone being present and certain other persons sitting around, that if you had a daughter or a sister and you wanted her to stay straight, although she had to be ^a working girl and *own* her own living, that you would not want her to have any better treatment and education than she would get in the Owl Cafe?

MR. PALMER: We object to that as incompetent, irrelevant and immaterial.

THE COURT: Well, that is the same line as the question that was put yesterday, the influence that that surrounding had upon these particular witnesses. To what proposition does this go in the way of impeachment, if any?

(Testimony of Sallie Margaret Claxton.) Alma Person.)

(Page 202 of Transcript) MR. ROGERS: It is not by way of impeachment, and is not a contradiction or impeachment of anyone.

MR. PALMER: It is not cross-examination either, if your Honor please.

MR. ROGERS: But it is as a matter of fact a vital element of the case, the views these young women took of their treatment there, and whether they were taken there for the purpose of debauchery.

THE COURT: I am going to overrule the objection.

MR. PALMER: All right, your Honor.

MR. ROGERS: Will you please read the question. (Question read).

A. Yes sir, I did say that.

Q. And was that true?

A. Yes sir.

MR. PALMER: Well—

THE COURT: I think, Mr. Palmer, that we might as well get the opinion of these girls of the influence by that sight. You know the history of the life of these girls. I will allow that question, and allow you to recall that other witness and ask her.

MR. ROGERS: Yes sir.

THE COURT: If the scenes there in any way excited her passions.

(P. 203 of Transcript) Q. BY MR. ROGERS: Now, during your career, you say you began theatrical work when you were six years old.

A. Yes sir.

(Testimony of Sallie Margaret Claxton.) Alma Person.)

Q. And were on the stage from that time on. During that time were you employed through various agencies, that is theatrical agencies, to go to various cafes and entertainment places?

A. Yes sir.

Q. After you had been at the Owl Cafe the first time, did you return?

A. Yes sir.

Q. And how many times have you been employed there?

A. About four times.

Q. And during all the times that you have been employed there, have you been permitted at any time to associate with any men or meet any men or go anywhere with any men, have them come to your rooms, make dates with them, as you call it, appointments with them, or anything of that sort?

A. No sir.

(P. 211 of Transcript) Q. And then you would go and sit at the tables. During the time you were dancing there, there were no policemen dancing with you?

A. No policemen?

Q. Yes, at the time you were dancing with the men there was not any policemen right there going around in the waltz with you?

A. No sir.

Q. And at the time you sat at the table, no policeman sat at the table with you, when you were sitting there drinking with those men?

(Testimony of Sallie Margaret Claxton.) ~~Alma~~ Person.)

A. No sir.

Q. And when you went across the border, back home, there was not any policemen following you; you didn't have any outriders, any police outriders or anything?

A. Well, they watched us.

MR. PALMER: They just watched you. That is all.

Recross-Examination

BY MR. ROGERS:

Q. Now about the policemen. While the policemen did not dance with you while you were dancing with someone else, or sit at the table, there was always an officer right there present, circulating around among the tables, was there not?

A. Yes sir.

Q. And not only an American officer,—this Dan somebody or other,—but with Mexican officers as well, in uniform?

A. Yes sir.

Q. Always on the floor?

A. Yes sir.

Q. And when you went home at night these officers always—while they did not accompany you, they always watched you home?

A. Yes sir.

Q. BY MR. PALMER: How many policemen did they keep there on the floor of that place all the time?

A. What do you mean, just in the dance hall?

Q. I mean in the dance hall, and the gambling room, and around in other places.

A. About from 7 to 10.

(Testimony of Sallie Margaret Claxton.) Alma Person.)

(P. 213 of Transcript) Q. 7 to 10 there all the time?

A. All the time.

Q. From the time you went to work until you quit?

A. Yes sir.

TESTIMONY OF GRACE COVERT, FOR THE GOVERNMENT.

GRACE COVERT, called on behalf of the Prosecution being first duly sworn, testified as follows:

My stage name is Grace Claire. I was eighteen years old on last November. I met Mr. and Mrs. Fabian about a year ago. I worked at other places as a show-girl. I had a conversation with Mr. and Mrs. Fabian about coming to Callexico.

(P. 216 of Transcript) Q. Now, did you have any conversation with them, or either of them in regard to going to Callexico?

A. Yes sir.

MR. ROGERS: That is objected to as irrelevant, incompetent and immaterial, particularly the part relating to Mrs. Fabian, she not being one of the parties defendant or charged here, and there having been no foundation for evidence laid as respects any conspiracy, so-called, or agreement, so as to bind any other defendants concerning their testimony, and particularly the statements of Mrs. Fabian; and no foundation has been laid.

THE COURT: The objection will be overruled. He didn't ask what the conversation was. She has answered.

(Testimony of Grace Covert.)

MR. PALMER: I didn't hear the answer.

THE COURT: She said, yes sir.

Q. BY MR. PALMER: Was that conversation had by you with both of them together?

A. No, sir.

(P. 217 of Transcript) Q. Did you have a conversation with both of them together about that?

A. I did, yes sir.

Q. State what was said in that conversation.

A. Why—

MR. ROGERS: I object to her stating—if I may be permitted the same objection I made a moment ago to the other question without repetition, unless counsel request it.

THE COURT: Well, it is not necessary to repeat it. The conversation had in the presence of Fabian, of course, is material, regardless of who had it. The objection will be overruled.

A. Why, I don't know. They mentioned the salary and what we had to do. That was all.

Q. BY MR. PALMER: Now, what did they—a salary for what?

A. Working in the chorus.

Q. Where?

A. At Calexico, the Owl Cafe—or Mexicali.

Q. And what was said about their wanting you to go down there, if there was anything said?

A. Why, they wanted me to work in the chorus, and that was all. They told me there were prostitutes down there and—

(Testimony of Grace Covert.)

Q. They wanted you to work in the chorus at the Owl Cafe at Mexicali?

A. Yes sir.

(P. 218 of Transcript) Q. BY THE COURT: You were about to make a statement, and you were interrupted. You said there were prostitutes there, and something. What did you want to say?

A. They told me that there were prostitutes there, that I was to have nothing to do with them, whatever.

Q. BY MR. PALMER: What did they tell you you were to receive?

A. \$30 ^{the} ~~to~~ first two weeks, and \$25 the following weeks.

Q. And what, if anything, was said to you about transportation down there?

MR. ROGERS: May my objection follow this?

THE COURT: Yes sir.

MR. PALMER: Read the question.

(Last question read by the reporter.).

A. Why, transportation was paid—would be paid.

Q. They were to pay the transportation?

A. Yes.

Q. Who was with you at that time?

A. Grace Fay.

Q. Do you know where she is now?

A. No sir.

Q. Now, did you accept that offer at that time?

MR. ROGERS: Objected to as calling for a conclusion and opinion, and incompetent.

(Testimony of Grace Covert.)

Q. BY MR. PALMER: Did you go down there from Los Angeles in answer to that talk?

(P. 219 of Transcript) A. Why, I decided to go, but I changed my mind; I didn't go right away.

Q. Where did you then go?

A. Bisbee, Arizona.

Q. What did you do there?

A. Grace Fay and I went with the Raymond Teel show.

Q. Went to Bisbee; afterwards did you communicate with the Fabians about going to Calexico?

A. Yes sir.

Q. How?

A. Wrote Mrs. Fabian a letter.

Q. And what in that letter did you—Have you a copy of that letter?

A. No sir.

Q. What in that letter did you say to her about going to Calexico or Mexicali?

MR. ROGERS: Objected to on the ground it is incompetent, no foundation has been laid; it is irrelevant and immaterial.

THE COURT: That is a letter to Mrs. Fabian?

MR. PALMER: Yes sir.

MR. ROGERS: To Mrs. Fabian.

(P. 220 of Transcript) MR. PALMER: Who has been, by the objection of counsel, prevented from being examined.

MR. ROGERS: I take exception to that statement of counsel in these circumstances and characterize it as

(Testimony of Grace Covert.)

legal misconduct. I don't speak of it as personal misconduct, you understand, but I take exception as legal misconduct.

THE COURT: I will sustain an objection to it at this time.

Q. BY MR. PALMER: Did you receive any communication from Mrs. Fabian in answer to your letter?

MR. ROGERS: Objected to as immaterial, incompetent and irrelevant, on the ground that Mrs. Fabian is not shown to be a party to the conspiracy.

THE COURT: I will overrule the objection.

MR. PALMER: Read the question.

(Last question read by the reporter).

A. Yes; I got a telegram.

(P. 222 of Transcript) Q. Now, did you at the railroad station inquire for tickets for yourself and Grace Fay to go from Bisbee, Arizona, to Calexico, California?

A. Yes.

MR. ROGERS: I have to object to that as leading and suggestive, in addition to the other objection.

(P. 223 of Transcript) THE COURT: It is leading, but not of primary importance. I will overrule the objection.

Q. BY MR. PALMER: Did you answer?

A. Yes sir.

Q. Were the tickets there? Were you furnished with the tickets by the railroad agent?

A. Yes sir.

Q. You and Miss Fay both?

(Testimony of Grace Covert.)

THE COURT: Answer yes or no.

A. Yes sir.

Q. BY MR. PALMER: And did you travel upon those tickets so furnished to you?

A. Yes sir.

Q. Where did you go to on those tickets? Where did you go?

A. To Calexico.

Q. To Calexico?

A. Yes sir.

Q. BY THE COURT: Did you pay for them?

A. No sir. We paid \$2.50 for something; I don't know what it was.

(P. 226 of Transcript) Q. Did you sign a contract with the company?

A. Yes sir

Q. Have you a copy of the contract?

A. Yes sir.

Q. Have you it with you?

(P. 227 of Transcript) A. Yes sir.

A. Will you let me see it?

(Witness handing paper to Mr. Palmer).

Q. Who made out the contract for you to sign?

A. I don't remember.

Q. Can you tell by looking at the paper itself?

MR. ROGERS: Well, unless she saw it, Mrs. Covert saw it written—

THE WITNESS: No; I don't remember who made it out.

(Testimony of Grace Covert.)

Q. BY MR. PALMER: Did you see it written out?

A. Yes, I did, but I don't remember who it was.

Q. Well, where was it made out?

A. Really, I don't know.

Q. Was it at the Owl Cafe?

A. I couldn't say.

Q. At the Virginia Hotel?

A. I really don't remember.

Q. This is the contract that you worked there under, is it?

A. Yes sir.

MR. ROGERS: Well, that is calling for a conclusion and opinion, and incompetent. The circumstances of her signing it may possibly be competent, but that is certainly a conclusion.

MR. PALMER: We offer the contract in evidence.

MR. ROGERS: Objected to as no foundation laid, irrelevant, incompetent and immaterial.

(P. 228 of Transcript) THE COURT: Let me see it. (Receiving paper from Mr. Palmer). I am inclined to think, Mr. Palmer, you should prove the execution of the contract by the other party, or have some evidence on the subject.

Q. BY MR. PALMER: Did you see the contract written?

A. I don't remember.

Q. You don't remember? Is that your signature there? (exhibiting paper to witness).

A. Yes sir.

(Testimony of Grace Covert.)

Q. Do you know Dan Malone?

A. Yes sir.

Q. Don't you know that Dan Malone wrote that contract?

A. No.

Q. Did you see him sign his name to it there?

A. I don't remember.

Q. You don't remember? Your Honor, we offer this in evidence.

MR. ROGERS: Objected to, no foundation laid, incompetent, irrelevant and immaterial.

THE COURT: Is that the contract, you say, under which you worked?

A. Yes sir.

THE COURT: I will overrule the objection.

THE CLERK: Government's Exhibit No. 3.

THE COURT: What exhibit is it marked?

(P. 229 of Transcript) THE CLERK: No. 3, your Honor; Government's Exhibit 3.

MR. PALMER: (Reading)"

"Mexicali, B. C., Mexico, March 28, 1916.

"Contract between Grace Clair and the Owl Cafe.

"I, Grace Claire, this day and date, March 28th 1916, at Mexicali, Mexico, enter into the following described contract:

"Indefinite engagement at \$30.00 per week for a period of 2 weeks, and \$25.00 for the following indefinite weeks, to appear in chorus act commencing March 28, 1916; to appear not to exceed six acts each evening. Working hours 7:30 p. m. to 3 a. m.

(Testimony of Grace Covert.)

"Privilege retained by the Owl Cafe for an extended engagement.

"Disorderly conduct or prostitution shall be cause for immediate dismissal and cancellation of this contract.

"Percentage on drinks for women 40 per cent, except Schiltz beer, which shall be 50 per cent.

"All performers to be governed by house rules.

"Witness our hands and seal this 28th day of March, 1916, at Mexicali, B. Cfa, Mexico.

"The Owl Cafe, By D. Malone.

"Grace Claire."

(P. 230 of Transcript) Q. And then after you danced with men, what was done then?

A. Why, we would sit down and have drinks.

Q. And was there any understanding as to whether a man that you danced with—was it a rule of the house men you danced with should buy drinks?

MR. ROGERS: Objected to as irrelevant and incompetent, no foundation laid. I don't know what he means by "a rule of the house."

(P. 231 of Transcript) THE COURT: Well, I will sustain an objection on the ground that the rule may not—Were there any instructions about that?

MR. PALMER: Well, I presume, your Honor, of course, that there were no instructions about it, and I don't want to ask that question. It would waste time.

Q. You had no instructions that the men that

(Testimony of Grace Covert.)

danced with you should buy drinks? You didn't have any instructions like that?

A. Why, we didn't have to even dance with them if we didn't want to.

Q. Yes. But you didn't have any instructions that a man couldn't dance without buying drinks?

A. I don't know if they had, but they could if they wanted to.

Q. But what I mean is, you had no instructions on the subject by the managers of the Owl Cafe? Did you have any instructions on that subject as to whether a man should buy you drinks after he danced with you?

A. I don't remember.

(P. 232 of Transcript) Q. BY MR. PALMER: Did you have any instructions from any of the management about not associating with any women about that cafe?

A. Yes sir.

CROSS-EXAMINATION.

Mrs. Covert testified on cross-examination that she was working for the Raymond Teel Burlesque Company of Lowell, Arizona, as a chorus girl before she went to work for the Owl Cafe. That she wrote to Mrs. Fabian at Calexico to get her a job.

(P. 236 of Transcript) Q. Is this the letter, Mrs. Covert? I will show you an envelope first. Is that your writing? (Handing paper to the witness)

A. Yes, sir.

(Testimony of Grace Covert.)

Q. And the letter? (Handing paper to the witness)

A. There are two pages there. Suppose you read both pages.

Q. BY THE COURT: Don't you recognize the letter without taking the time to read it all?

A. Yes.

MR. ROGERS: It is pretty dark here.

THE COURT: She says, yes.

Q. BY MR. ROGERS: So then we are to understand, Mrs. Covert, that being with this company and not getting your wages, you thought you would rather go down to Calxico, and so you wrote this letter; that is about the size of it?

(P. 237 of Transcript) A. Yes sir.

MR. ROGERS: We offer this in evidence. (Handing letter to Mr. Palmer). While you are reading it, I will go along a little bit.

Q. Were you married at that time, Mrs. Covert?

A. Yes sir.

Q. BY THE COURT: What is the answer?

(Last question read by the reporter).

THE COURT: All right, proceed.

Q. BY MR. ROGERS: And pardon me, how long before going with the Raymond Teel Company had you been married?

A. Why, married November the 29th, and I don't remember exactly what the day of the week was.

Q. BY MR. PALMER: What year?

Q. BY MR. ROGERS: November 29th of 1915?

(Testimony of Grace Covert.)

A. Yes sir.

Q. This letter from Bisbee appears to be March 22, 1916. So you would be married—

A. Yes, the November before that.

Q. The November before that?

A. Yes sir.

Q. Your husband with you?

A. No sir.

(P. 238 of Transcript) Q. Was not with you at the time that you went to Bisbee?

A. No sir.

Q. Was he with you at Calexico at any time?

A. No sir.

MR. PALMER: I haven't any objection to it.

MR. ROGERS: The envelope and the letter I offer as Defendants' Exhibit.

THE CLERK: Exhibit B.

MR. ROGERS: B1 and 2?

THE CLERK: No, all one exhibit, I presume, unless you want them separate.

(P. 239 of Transcript) MR. ROGERS: No, I don't think so. The envelope (reading) "Bisbee, March 22, 8:30 p. 1916. Mrs. Grace Fabian, Calexico, General Delivery." Upon the back of it, "Return to Grace Claire, Bisbee, Arizona." The post mark "Bisbee, Arizona," and on the back, "Calexico, Cal., March 24, 1916." And the letter, "Bisbee, Arizona, March 22nd, 1916." "Dear Mrs. Fabian: I and Grace Fay are in Bisbee, which I don't think is far from Calexico, and would like very much to join you if you

(Testimony of Grace Covert.)

have any vacancies and still care to have us at \$30 a week.

"I was out the day you called. My sister-in-law answered the phone. She said you would call again, but you didn't. I called your place but could get no answer. The following day we were offered a position with the Raymond Teel Comedy Company to go to Bisbee and from there to Calexico, and other parts of Arizona, and we thought by going we might be able to get in touch with you. We got notice yesterday we were not going to Calexico, but to Globe instead, and then to Honolulu, so if you care to have us and will send us the fare or tickets to Calexico, we will come immediately and not come right back but to stay until you leave.

"I am very sorry I was out when you called, as I was very anxious to go with you and liked your people very much.

"Miss Fay is also here with me and is now of age and very anxious to come. We can start within a moment's notice if you decide on having us.

(P. 240 of Transcript)

"Please answer immediately, as if we don't hear from you by Saturday we must leave with this company for Globe, going Saturday night.

"Sincerely,

"Grace Claire and Grace Fay."

(P. 244 of Transcript) Q. Now, at any time were you told what you were to do if any man made improper proposals to you or propositions to you? I

(Testimony of Grace Covert.)

will change that a bit. Were there officers about through the place there, policemen, guards and one thing and another?

A. Yes sir.

Q. Now you may state whether or not you were directed by the management what to do in case any man said anything to you of an improper nature.

A. Just let him know.

Q. Let the officer know?

A. Yes sir.

Q. Did any man make any proposals to you of an improper nature while you were there?

A. No sir.

Q. Now with respect to these women that you were told were there, who were prostitutes: At any time did you hold any conversation with any of them?

A. No sir.

Q. Did you at any time sit down at a table with any of them?

A. No sir.

(P. 245 of Transcript) Q. Or did any of them approach you in any way?

A. No sir.

Q. Now Mrs. Covert, since you returned from Calexico—you will pardon me for asking you—have you led any immoral life whatever?

A. None whatever.

Q. Did anything happen at Calexico that did in any wise induce you to view with approval an immoral life—

(Testimony of Grace Covert.)

MR. PALMER: Now we object to that.

MR. ROGERS: (Continuing)—or to do immoral acts?

MR. PALMER: We object to that if the court please as being incompetent, irrelevant and immaterial and not cross-examination.

MR. ROGERS: I mean Mexicali; I want to modify my question.

MR. PALMER: Sure. It is not cross-examination, and calling for a conclusion of the witness.

THE COURT: There has a question been in my mind all the time as to whether it was cross-examination, I thought it was part of the defense.

MR. ROGERS: In that behalf, sir, might I suggest if it is a part of the defense, nevertheless it becomes a part of the defense by reason of the testimony given on direct; it becomes a part of the defense by virtue of the things which Mrs. Covert, Mrs.—

THE COURT: I will overrule the objection. Proceed.

(P. 246 of Transcript) MR. ROGERS: Do you understand the question, Mrs. Covert? I will re-put it to you. Did anything you saw—

MR. PALMER: No, if the court please, we ask that the Reporter read the question, so I won't need to make the objection again.

MR. ROGERS: Very good.

THE COURT: Read it.

MR. ROGERS: Mexicali instead of Calexico.

(Question read as follows: "Did anything hap-

(Testimony of Grace Covert.)

pen at Mexicali that did in anywise induce you to view with approval an immoral life or to do immoral acts?").

A. No sir.

Q. Since you have returned from Calexico, what business have you been following, what have you been doing?

A. Working in cafes, chorus work.

(P. 248 of Transcript) Q. And Mr. Fabian, and Mr. Malone and Mr. Beyer?

A. Yes sir.

Q. Where did you get acquainted with them?—Well, besides Mr. Fabian, you have already testified to meeting him on Main street in Los Angeles.

A. I met them at Calexico.

Q. Met all of them at Calexico?

A. Yes sir.

Q. Were they doing—Have you seen them at the Owl Cafe?

A. Yes sir.

Q. What were they doing there?

A. Why, Mr. Malone was mostly watching the girls, is all I know.

Q. Do you know whether he was—what official title he had there?

A. Beg pardon?

(P. 249 of Transcript) Q. Did he ever tell you what his position was there?

A. I think not.

Q. Did he say anything to you about being the

(Testimony of Grace Covert.)

manager?

A. Oh, yes; I knew he was the manager.

Q. The manager of the Owl Cafe?

A. Yes sir.

Q. And what position did Warren Fabian occupy?

A. Why, he was the chorus director and he led numbers.

Q. And what position did Chartran occupy; what was he doing there?

(No answer).

Q. BY THE COURT: What did he do there?

A. I don't know.

Q. BY MR. PALMER: What did Beyer do there?

A. Mr. who?

Q. What was his position, Mr. Beyer?

A. I don't know who he is.

Q. Do you know F. B. Beyer, or Beyers?

A. No, I think not.

Q. Do you know these four men sitting here, all of them (indicating the defendants)?

A. I know three of them.

Q. You know three of them.

A. I know the other one to speak to, but that is all.

Q. Where did you get acquainted with him enough to know him to speak to him?

(P. 250 of Transcript) A. At the Owl Cafe.

Q. Did you learn what position he occupied there?

A. No sir.

TESTIMONY OF BARNEY MORRIS, FOR THE GOVERNMENT.

Barney Morris, called as a witness on behalf of the Prosecution, being first duly sworn, testified as follows:

My name is Barney Morris. I reside in Los Angeles, having a jewelry business called The Security Loan and Jewelry Company. I am acquainted with Mr. Beyer and all the other defendants. Some time in March, 1916, Mr. Malone gave me three envelopes; upon each envelope was written a name, and requested me to deliver the envelopes when the parties called for the envelopes. I do not remember the name of any particular one. The women whose names were on the envelopes subsequently came and got the envelopes. I am not, and have not been, in the employ of F. B. Beyer. I know Mr. Beyer. I have known him for about two years. I know a firm by the name of Allen, Withington, Beyer, but have never been in their employ. They have a cafe and gambling place at Mexicali. I have seen Mr. Beyer write his name.

(P. 263 of Transcript) Q. Have you seen Mr. Beyer write?

A. Have I seen him what?

Q. Write, write his name.

A. Yes, sir.

Q. You know his name when you see it written?

A. Absolutely, yes sir.

THE COURT: F. B. Beyer?

A. F. B. Beyer, yes sir.

Q. BY MR. PALMER: I will ask you to look at this paper, Mr. Morris (showing paper to witness)—

(Testimony of Barney Morris.)

MR. ROGERS: Don't answer any questions, please, until I have an opportunity to object.

THE COURT: Have the paper marked for identification.

THE CLERK: Government's Exhibit 4 for Identification.

Q. BY MR. PALMER: Now, I will ask you, sir, whether or not the name that you have just seen there, F. B. Beyer, on this Exhibit 4 for Identification, is the signature of F. B. Beyer?

MR. ROGERS: Objected to as no foundation laid, incompetent, irrelevant and immaterial. The foundation as an expert is not laid, and the matter itself is immaterial.

(P. 264 of Transcript) THE COURT: Objection overruled.

MR. PALMER: Read the question.

(Question read.).

A. The signature is rather crowded there, although it looks like the signature.

Q. It looks like the signature of Mr. Beyer, as you know it?

A. Yes, it does.

MR. ROGERS: The same objection.

Q. BY MR. PALMER: Would you say it is his signature?

A. I would not swear to it; it looks like his signature.

MR. ROGERS: I wanted you not to answer until I had a chance to object.

A. I beg your pardon.

(Testimony of Barney Morris.)

MR. ROGERS: I am objecting as incompetent, irrelevant and immaterial, and no foundation laid. If my objection may follow this all the way through I won't continue to repeat it.

THE COURT: The objection may follow it. Objection overruled.

MR. PALMER: Now, your Honor, we offer in evidence the paper that has just been marked as United States Exhibit 4.

MR. ROGERS: It is objected to; no foundation laid, not properly identified, incompetent, irrelevant and immaterial.

THE COURT: Let's see it.

(P. 265 of Transcript) (The paper was handed to the court).

Q. BY THE COURT: What did you say your name was?

A. Barney Morris.

Q. How many times have you seen the signature of F. B. Beyer?

A. Oh, a number of times.

Q. Have you had correspondence with him?

A. Yes, I have had a few letters.

Q. Now, in your opinion, is this his signature, or is it not?

A. It looks like his signature.

Q. Well, what is your opinion about it?

A. My opinion is that it is his signature.

THE COURT: The objection will be overruled.

MR. PALMER: (Reading)

(Testimony of Barney Morris.)

“PLAINTIFF’S EXHIBIT 4.

“THEATRICAL CONTRACT. Mexicali, B. C. Mexico, 3/19/16.

“Contract between Lela Cavell and the Owl Cafe.

“I, Lela Cavell, this day and date, March 19, at Mexicali, Mex., enter into the following described contract:

Two weeks engagement at \$30 per week, for a period of two weeks, and \$25 for the following weeks, to appear in chorus act, commencing 3/19/16, to appear not to exceed six acts each evening. Working hours 7:30 P. M. to 3 A. M. Privilege retained by the Owl Cafe for an extended engagement. Disorderly conduct or prostitution shall be cause for immediate dismissal and cancellation of this contract. Percentage on drinks for women, 40 per cent, except Schiltz beer, which shall be 50 per cent. All performers to be governed by house rules.

(P. 266 of Transcript)

“Witness our hands and seal this 19th day of March, 1916, at Mexicali, B. Cfa, Mexico The Owl Cafe by F. B. Beyer, Lela Cavell.”

CROSS-EXAMINATION

(P. 267 of Transcript) BY MR. ROGERS:

Q. You spoke about knowing Mr. Beyer’s signature and having seen him—Do you know it from having seen him sign it himself in your presence? Have you ever seen him write it yourself in your presence?

A. Yes, I have.

(Testimony of Barney Morris.)

Q. How many times?

A. I don't just remember; a few times.

Q. A few times?

A. Yes, probably two or three or four times.

Q. Would you say that the body of this contract, where the words appear in it, was in his handwriting?

A. I don't say it was his signature. I said it looked like his signature.

Q. Well, Mr. Morris, would you say that the body of the contract, the words inserted in the blanks—

A. Oh, that I wouldn't know.

Q. You wouldn't know?

A. No.

Q. Well, if you have seen him write, haven't you as much opinion about that as you have about the signature?

A. No, I have not. The signature to me is easier to remember than the handwriting.

Q. Have you any correspondence of his in your possession?

A. I don't know whether I have or not.

(P. 268 of Transcript) Q. How many times have you seen him write his signature?

A. I don't know exactly, Mr. Rogers.

Q. Three or four or five or six or ten or what?

A. Oh, probably three or four.

Q. Three or four?

A. Yes; maybe more, maybe less.

(P. 269 of Transcript) Q. And never having seen him sign his name in pencil, and never having

(Testimony of Barney Morris.)

seen his signature written in pencil, would you say that this is his signature?

A. No; I didn't say that that was his signature.

Q. And don't say now?

A. No, I don't.

TESTIMONY OF DAISY SMITH, FOR THE GOVERNMENT.

Daisy Smith, called as a witness on behalf of the Prosecution, being first duly sworn, testified as follows:

My profession is the show business. I worked at the Regal Theater in Los Angeles and other places. I am not acquainted with F. B. Beyer. I have never had any conversation with Mr. Beyer. There was never anything said to me about going to Calexico or Mexicali, neither was there anything said to me about going to work in the Owl Cafe. I never had any talk with Warren Fabian about going to Calexico or Mexicali. I did have a talk with defendant Chartran about a telegram. That conversation was in the back of the Regal Theater. I do not remember when I got it and Chartran said that I heard that you are going to Calexico and I answered saying that I do not know where they get the idea. I had received a telegram, I cannot say from whom, but at that conversation Mr. Chartran took the telegram away from me and just said, "What do you want with it."

CROSS-EXAMINATION.

I never was a performer at the Owl Cafe or never went to Mexicali. I do not know anything about the Owl Theater.

**TESTIMONY OF DICK PARKES, FOR THE
GOVERNMENT.**

Dick Parkes, called as a witness on behalf of the Prosecution, being first duly sworn, testified as follows:

I am in the theatrical booking exchange business. I had no conversation with any of the defendants.

**TESTIMONY OF HENRY W. DELO, FOR THE
GOVERNMENT.**

Henry W. Delo, called as a witness on behalf of the Prosecution, being first duly sworn, testified as follows:

I am a special officer for the Republic Theater. I know Mr. and Mrs. Fabian. I heard a conversation between Warren Fabian, Mrs. Fabian, *Allen* Person in regard to going to Mexicali.

(P. 283 of Transcript) Q. Did you hear any conversation between Warren Fabian and Mrs. Fabian and Alma Person and Anna Gregory in regard to going to Mexicali?

MR. ROGERS: That is objected to as irrelevant, incompetent and immaterial, and I call particular attention to the fact that both Mrs. Fabian and Anna Gregory have been shown to be married to the defendants, and therefore, conversations between them cannot be related.

THE COURT: The objection will be overruled. What is your answer?

A. What is the question?

(Last question read by the reporter.)

A. Only that they were going there to work.

(Testimony of Henry W. Delo.)

Q. BY MR. PALMER: Did you hear any arrangement made between Fabian and these girls, or either of them, or any talk about their contract?

MR. ROGERS: Objected to as calling for a conclusion or opinion, and incompetent, irrelevant and immaterial.

MR. PALMER: The first few words of that are objectionable, and I will reframe the question.

THE COURT: Well, re-frame the question then.

Q. BY MR. PALMER: Did you hear any conversation between Fabian and these girls, or either of them, in regard to the contract that would be made, or the terms upon which they should go to Calexico?

A. No, I didn't.

Q. You did not. That is all.

TESTIMONY OF C. F. WILLARD, FOR THE GOVERNMENT.

C. F. Willard, called as a witness on behalf of the Prosecution, being first duly sworn, testified as follows:

I was working for the Southern Pacific Railway on March 25, 1916. I sold Mrs. Warren Fabian tickets to be telegraphed to Bisbee, etc.

(P. 285 of Transcript) Q. Mr. Willard, I will ask you to state whether or not you sold to Mrs. Warren Fabian two tickets to be telegraphed to Bisbee, Arizona, to be used from Bisbee, Arizona, to Calexico, California, by Grace Claire and Grace Fay?

MR. ROGERS: Objected to as irrelevant, incompetent and immaterial, no foundation laid, and not within the issues.

(Testimony of C. F. Willard.)

THE COURT: The objection will be overruled.

A. Yes sir, I did.

Q. BY MR. PALMER: When?

A. March 25th, 1916.

MR. ROGERS: May my objection follow this whole line?

MR. PALMER: Oh, yes.

Q. If you know whether or not the tickets were actually telegraphed to Bisbee, Arizona, you may state.

MR. ROGERS: Objected to as irrelevant, incompetent and immaterial, calling for a conclusion or opinion, no foundation laid, and not the best evidence.

THE COURT: The objection is overruled.

A. Yes sir; they were.

Q. BY MR. PALMER: Did you telegraph the tickets yourself?

A. I did. Well, I will—I didn't telegraph them direct to Bisbee, but I knew they were telegraphed, because if they would not have, they would have been marked on here. I telegraphed the General Passenger Office authorizing the tickets to be delivered, and my records show they were delivered—

(P. 286 of Transcript) MR. ROGERS: Well, now, I will object to that as not the best evidence, a conclusion or opinion, and move to strike out the answer as to what his records show.

THE COURT: The answer will be stricken out.

MR. PALMER: That is, as to the part about what his records show?

(Testimony of C. F. Willard.)

THE COURT: Yes, and about telegraphing.

Q. BY MR. PALMER: Have you ever been in the Owl Cafe—the old Owl Cafe in Mexicali?

A. Yes sir.

Q. Have you ever seen there members of the chorus or did you know the members of the chorus—some of them?

A. I have seen them there, yes sir.

MR. ROGERS: I think the times is not stated, if your Honor pleases. I call your Honor's attention to that, that the time was not stated; it may not be within the issues.

THE COURT: All right. I understand that, Mr. Rogers. The objection will be overruled.

Q. BY MR. PALMER: I will ask you if you have ever seen any members of that chorus in the old Owl Cafe in the part of the cafe that was used for the purpose of gambling?

CROSS-EXAMINATION.

I worked for the Southern Pacific in February and March, 1916, and worked for them at that time for about six weeks to two months. I sold the ticket to Mrs. Fabian the same day that I made it out. I made a record of the sale of the ticket.

(P. 293 of Transcript) Q. Where is it?

A. Well, there is probably a dozen or fifteen records. They should be in the office at Calexico.

Q. And the ticket itself, where should that be?

A. Let's see—it should be in the possession of the general passenger department of the E. P. & S. W.

(Testimony of C. F. Willard.)

That would be my impression; I am not in position to know that, but that is my impression, it should be.

Q. It would be in the possession of the Southern Pacific Company, would it not, the auditor's department of the Southern Pacific, don't you know that, a Southern Pacific ticket?

(P. 294 of Transcript) A. I know, but it was turned over to the E. P. & S. W. for authority for issuing a ticket.

TESTIMONY OF DAVE GERSHON, FOR THE GOVERNMENT.

Dave Gershon, called as a witness on behalf of the Prosecution, being first duly sworn, testified as follows:

I have made diligent efforts to find Lela Caville for the purpose of this trial, also Vivian De Lamar and Daisy North, but have been unable to locate them.

STIPULATION.

(P. 300 of Transcript) Stipulated by counsel for Government and defendant that under the laws of Mexico, prostitution is licensed and the gambling games are licensed and that the sale of intoxicating liquors is licensed, and that the Owl Cafe was a licensed place under the laws of Mexico.

Whereupon Government rests.

TESTIMONY OF FRANCISCO BORQUES, FOR THE DEFENDANTS.

Francisco Borques, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

That he is the Presidente of Mexicali, the district in which the Owl Cafe operates. That the Owl Cafe is licensed to sell liquors and permits games of chance to be played in its theater. That in January, February and March, 1916, the Owl Theater conducted a chorus in connection with its theater and that the girls who performed in the chorus were not permitted to practice prostitution. That at all times the girls were under surveillance by officers of the Mexican government under his supervision and that said supervision consists of having officers in the theater where the girls performed. That he never observed any disorder in connection with the conduct of these women and that the reason that he knew that these women did not practice prostitution is that any woman that practices or indulges in prostitution in that district is required to register and take out a license before they can do so. That said licensed women are required to pay a fee weekly to the government for practicing prostitution; that the girls whose names are mentioned in the indictment, and also other girls who performed in the chorus at the Owl Theater, had not taken out any license, nor had they registered to practice prostitution; that he visited the Owl Theater every night in the months of February, March, April and May, 1916, and that he personally knows as well

(Testimony of Francisco Borques.)

as from the reports of his officers that the chorus girls behaved themselves properly and did not indulge in any lewd pastimes and that their chorus work was the same as was observed in any theater wherein a chorus was used. That the chorus girls were not permitted to live in Mexicali; that he knows of his own knowledge that they lived in Calexico, in the state of California. That the girls were obliged to return to Calexico after their performance. That he knows of his own knowledge and having seen that the Owl Cafe had its manager there to take care of the chorus girls and not allow any immorality. That he is acquainted with defendants and that he has never observed any misconduct or disorderly act by them towards any of the girls at the Owl Theater, or at any other place. That he has observed drinking and gambling in the Owl Theater, and he has seen men under the influence of liquor, but insofar as their conduct towards the girls, he has not observed any misconduct. That as soon as there was any disorder in any part of the theater by any person under the influence of liquor, that person was immediately arrested. There was a large dancing floor in the Owl Theater where every person could dance—the chorus girls, the licensed women and any other person who came in from the Valley who cared to dance. There were also crib rooms at the back of the Owl Theater at which the licensed women were compelled to live. They were not permitted to live in any other section of the city and the chorus women were not permitted to go back into these rooms under any circumstances to visit

(Testimony of Francisco Borques.)

these women or to associate with men in that section. The gambling tables were entirely separate from the dance floor. During all this time and at any other time, no complaints were ever made to me by any person or by the United States Government concerning the conduct of the defendants towards any of their chorus women or concerning the employment of the chorus women at the Owl Cafe or concerning the chorus women's conduct towards any men or concerning the conduct of any man towards them.

STIPULATION.

(P. 335 of Transcript) MR. ROGERS: If your Honor please, the stipulation we entered into last night was only just a skeleton of the matter, and your Honor will remember that after Mr. Palmer and I agreed upon the outline of it, I suggested some other matters, and it is really in the record hardly understandable for the purposes of the jury.

(P. 336 of Transcript) MR. PALMER: I would suggest, your Honor, the Reporter read the stipulation as made, and then if there is anything further that Mr. Rogers desires a stipulation as to, if he will state that, I will then see whether or not we will stipulate that.

MR. ROGERS: When I was speaking last night, sir, it was not with the intention it should be put in such form as the jury might understand it. It was only in lawyers' language, and as we understood each other; and you remember after we had agreed upon the

first matter, then I suggested some changes and you agreed to them.

THE COURT: Well, it is all in there. The Reporter got down all that was said.

MR. ROGERS: We will try it, but I don't think it is quite understandable.

THE COURT: Well, I am inclined to think it is.

MR. ROGERS: Well, we can hear it.

THE COURT: Read, Mr. Reporter, what they said last night.

(The following colloquy between Court and counsel was read by the Reporter):

"THE COURT: Now, Mr. Rogers, in regard to these requests: Can you state what authorities you base them on, or do you want time to consider it?

"MR. ROGERS: I purpose to rely upon the authorities which we presented to your Honor at the time of your Honor's consideration of the demurrer to the indictment. I think in the papers your Honor will find a memorandum of authorities.

"THE COURT: Yes sir.

"MR. ROGERS: Those cases will be the authorities to which I will refer, and to certain charges which will be found in those cases. And so far as the matter of the introduction of this evidence which I speak of is concerned—and I will say to counsel that this is the point, so he may prepare himself—I purpose to introduce evidence concerning the laws of Mexico; that the laws of Mexico license establishments such as this; that the laws of Mexico permit games such as are played in this establishment; that the laws of Mexico, moreover, license the practice of prostitution, and

license those individuals who do practice it; and I purpose calling an expert on the foreign law, that being a matter of fact and therefore the subject of testimony,—I purpose introducing such a witness as that, to call your Honor's attention to the fact that all the acts complained of or introduced in evidence on the part of the Government as acts of immorality, are by the laws of Mexico permitted as lawful and moral. And thereupon the deduction—I will ask that we cannot in this country call an act immoral which is of itself licensed and made lawful by affirmative statute of Mexico. That is my point.

(P. 337 of Transcript) “MR. PALMER: In order to save time, I will be willing to stipulate that under the laws of Mexico prostitution is licensed, and that gambling games are licensed, and that the sale of intoxicating liquors is licensed.

“THE COURT: And anything else?

“MR. PALMER: And that this place was a licensed place under the laws of Mexico.

“MR. ROGERS: That will cover most of what I want, but I will have to call a witness—I think it is a deposition—the chief law officer of the jurisdiction, to testify that during the time which has been referred to in the testimony, he was continually supervising this place, was personally present there, with his officers and subordinates, and that at no time did he ever observe any illegal act, any immoral conduct.

“THE COURT: So far as the laws of Mexico are concerned,—

“MR. ROGERS: So far as the laws of Mexico are concerned.

“MR. PALMER: I want to insert in the statement of stipulation that I would be willing to make, that the practice of prostitution by one not licensed is a crime in Mexico.

“MR. ROGERS: Yes, that is agreeable.

“THE COURT: Now, read that, and see if you gentlemen have agreed, beginning with Mr. Palmer’s statement.

(The statement by Mr. Palmer was read).

“MR. ROGERS: Would counsel further be willing to stipulate that the word “licensed” as used by him means permitted by law, and that licenses are authorized to be issued by law for such matters?

“MR. PALMER: Yes.

(P. 338 of Transcript) “MR. ROGERS: He used the word “licensed.”

“MR. PALMER: Yes.

“THE COURT: That is, they are legalized.

“MR. PALMER: Yes, I am willing to do that.

“THE COURT: All right.

“MR. ROGERS: Now, with respect to the conduct of the place, then, I am satisfied that I will introduce only a deposition, and a showing with respect to the place itself, by the presidente—I think they call him—is that not it, Mr. Cohen?

“MR. COHEN: Yes, that is it.

“MR. ROGERS: The presidente of the jurisdiction, that he has observed this place at all times, and that

he observed at no time anything unlawful under the laws of Mexico."

MR. PALMER: I think perhaps that is the end of the stipulation.

THE COURT: That is the end of the stipulation.

MR. ROGERS: I think there was one other, if your Honor pleases. May I consult the reporter just a moment.

(Mr. Rogers consults Reporter).

MR. ROGERS: That is substantially it.

MR. PALMER: Now in reading this deposition, your Honor, it just occurred to me there was a statement there that the law of Mexico in regard to prostitution was attached to the deposition and made a part of it, and that was not read to the jury.

THE COURT: Well, it is in Spanish.

MR. PALMER: Well I think they have a translation of it, perhaps.

MR. ROGERS: Yes sir.

MR. PALMER: Have you a true translation of it?

MR. ROGERS: Yes. That is an inadvertence on my part.

(P. 339 of Transcript) MR. PALMER: Mr. Rogers, are you in a situation to say that is a correct translation?

MR. ROGERS: I am not, no sir. I would not say so, because I do not know.

MR. COHEN: By a man who lives in the district.

MR. PALMER: Are you familiar with the Spanish.

MR. ROGERS: Would your Honor permit me to

have the original deposition, with the original document?

THE COURT: Yes.

(Mr. Rogers shows the original document to Bailiff Dominguez).

MR. PALMER: Well, we have, I believe, stipulated, and I will not insist on the reading.

THE COURT: I don't see the necessity, gentlemen, of reading that.

MR. PALMER: It will take time, I suppose.

THE COURT: Mr. Rogers, I don't see the necessity of reading it. You have stipulated what the law was.

MR. ROGERS: I beg your Honor's pardon?

THE COURT: I don't see the necessity of reading that. You have stipulated what the law was.

MR. ROGERS: Yes sir; I don't think it is necessary to read it.

THE COURT: I think they can understand this stipulation better than they can that.

MR. ROGERS: Would your Honor permit me to just show the book, the regulations as they are in the book, to the jury, and while they may not be able to read the Spanish—

(P. 340 of Transcript) THE COURT: Let them see the book. It is in Spanish. "Reglamento", they call it.

(P. 341 of Transcript) MR. ROGERS: Mr. Palmer, just for the purpose of letting the jury understand it, with your Honor's permission, suppose just for the purpose of their understanding, these (indicating) are the rules with respect to prostitution in Mexico, in

Mexicali, the town of Mexicali, and that means the name, and that means the age, and that—

MR. PALMER: You ain't going to get me into that kind of a thing. I don't know.

MR. ROGERS: I think I might say without any question that these are the printed regulations.

MR. PALMER: That was sworn to by the presidente.

MR. ROGERS: I believe it is agreed that that book when issued to an individual, has a picture of the person inserted in the book, and the blanks are filled out. Here is one (showing book to Mr. Palmer). There is an original.

(The original document last referred to was marked Defendants' Exhibit D, and the same was exhibited to the jury.)

MR. PALMER: Mr. Rogers, what is the custom or the rule in the country, whether these books shall be on display at the place where the trade is carried on?

MR. ROGERS: I believe the women must be in possession of it very much as a saloon man in California has to have his license in his possession; that is, it may be called for at any time by any officer or any person, and must be produced at that time.

(P. 342 of Transcript) MR. COHEN: The book says that.

MR. ROGERS: I just glanced over it, with my very rudimentary knowledge of Spanish.

MR. PALMER: Does it have to be posted up at the outside?

MR. ROGERS: No, I don't think it has to be posted,

but it is subject to call by any person, an office or inspector or individual of any sort, and must be produced. It contains the photograph, and the name, and the age, and so forth. That book we are now showing you is an original, one that has actually been in use.

MR. PALMER: I will ask you further, Mr. Rogers, whether or not you will stipulate that under the law it is required that these women must have medical certificates also posted on the wall, where they are open to the inspection of any comer.

MR. COHEN: I can answer that. They must undergo an inspection every Friday by the medical inspectors of Mexico.

MR. ROGERS: That is why Friday is unlucky.

MR. PALMER: They don't have to have that posted? They have to keep that posted in their room?

MR. COHEN: Yes.

MR. ROGERS: "To call regularly every Friday, weekly, for a sanitary inspection, for the purpose of being examined and given a weekly certificate, and keep in a visible place in the premises, the last certificate."

(P. 343 of Transcript) THE COURT: Gentlemen, are you through with the evidence?

MR. ROGERS: I think that is all, sir.

THE COURT: Are you through for the United States attorney?

MR. ROGERS: Yes, your Honor.

THE COURT: Both sides rest.

MR. ROGERS: Yes sir.

MR. PALMER: We have no rebuttal.

(The above and foregoing was all of the evidence offered or received on the trial of the above entitled cause).

Defendant rests.

Thereupon, the Court admonished the jury and a recess was taken until ten A. M. of the next day; and thereupon, the Court instructed the jury as follows:

THE COURT: Gentlemen of the jury: It is my duty to state to you the law applicable to this case, and in your deliberations you will be bound by what I say is the law. I have decided that this indictment presents a case that is in violation of the law, and is a good indictment, and you are bound by that.

It is your exclusive province to judge of the facts of the case. You are the exclusive judges of the weight to be given to the evidence, and of the credibility of the witnesses. I have a right to comment upon the weight of the evidence, and upon the credibility of the witnesses, and in this instruction I propose to comment to some extent, upon the evidence introduced here, and I tell you that you are not bound by what I say concerning the weight to be given to the evidence, nor bound by what I may say that it proves. You must determine that for yourselves. Your right, however, to determine the weight of the evidence and the credibility of the witnesses is not arbitrary, but must be exercised with a legal discretion.

The indictment in this case was brought under Section 37 of the United States Criminal Code, charging a violation of Section 2 of what is known as the Mann

Act. Section 37 of the Criminal Code so far as it is necessary for you to consider, is as follows:

“If two or more persons conspire to * * * commit an offense against the United States * * * and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be”—

punished as prescribed in said section.

The offense which it is alleged the defendants conspired to commit is a violation of Section 2 of An Act of Congress passed June 25, 1910, and sometimes designated as the White Slave Traffic Act. Section 2 of said act which the defendants are charged with having violated, insofar as it is necessary for you to consider the same, is as follows:

“Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate commerce or foreign commerce * * * any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining any ticket or tickets, or any form of transportation or evidence of the right thereto to be used by any woman or girl in interstate or foreign commerce * * * in going to any place for the purpose of prostitution or debauchery or for any other immoral purpose, or with the intent or purpose

on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to the practice of debauchery, or any other immoral purpose, whereby any such woman or girl shall be transported in interstate or foreign commerce * * * shall be deemed guilty"—

of the crime prescribed in said section, and shall be punished accordingly.

You will observe that the offense charged against the defendants is not that of violating said White Slave Traffic Act but of a conspiracy to violate.

You will be called upon to determine, among others, the following questions:

Was there such a conspiracy as alleged in the indictment and did the defendants, for the purposes of effecting the object of the conspiracy, commit any of the overt acts charged in the indictment?

If the evidence satisfies you beyond a reasonable doubt of the existence of such conspiracy, and that the defendants for the purpose of effecting the object of said conspiracy, committed one of the overt acts which the indictment alleges was committed, you will find the defendants guilty as charged in the indictment. If, however, the evidence fails to satisfy you of the existence of such conspiracy, or that the defendants for the purpose of effecting the object of said conspiracy, committed one of the alleged overt acts, you will find the defendants not guilty.

The court further instructs you that a conspiracy is a combination between two or more persons to do a

criminal or unlawful act, or a lawful act by a criminal or unlawful means.

From this definition of conspiracy it follows, of course, that there can be no conspiracy where one individual acts by and for himself only.

A mere mental purpose cannot justify a conviction of conspiracy.

A common design is of the essence of the charge.

A person, therefore, in order to become a party to a conspiracy, must combine with someone else to effect the object of the conspiracy by the means agreed upon.

There are four defendants on trial. The indictment charges that the defendants conspired together, and with other persons to the grand jurors unknown. Therefore, you may convict one of the defendants or any of them, provided, however, you cannot convict one of the defendants and acquit the others unless you find that the one defendant that you do convict conspired with some person not named in the indictment to do the things charged in the indictment.

You are instructed that the acts of Mrs. Warren Fabian cannot be considered as the acts of the defendants, or any of them, unless you believe that she was one of the conspirator and was their agent and authorized by them to do what she did do.

To constitute a conspiracy it is not necessary that there should be an explicit or formal agreement between the alleged conspirators.

Though the common design is of the essence of the charge, it is not necessary to prove that the defendants came together and actually agreed in terms to have that design and to pursue it by common means. If it

be proved that the defendants pursued by their acts the same object, often by the same means, one performing one part and another another part of the same so as to complete it, with a view of attaining the same object, the jury will be justified in the conclusion that they were engaged in a conspiracy to effect that object.

The evidence in proof of a conspiracy may be, and from the nature of the case, generally will be circumstantial. Where such circumstantial evidence is relied upon to establish the conspiracy, or any other fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy, or other fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion.

If the evidence can be reconciled with the theory of innocence, the law requires that the defendants be given the benefit of the doubt and that the theory of innocence be adopted.

The Court further instructs you that while the acts or declarations of a co-conspirator cannot prove the existence of the conspiracy itself, any act or declaration done or made by one of the conspirators during the existence and in furtherance of the unlawful combination, when proven, is not only evidence against him but is evidence against the other conspirators who, if the combination is proved, is as much responsible for such act or declaration as if done or made by himself.

You must not, however, permit yourselves to use against either defendant, anything said or done outside of the presence of such defendant, unless you believe from the evidence, beyond a reasonable doubt, that at the time the things were said or done a conspiracy

existed between the parties saying and doing the things and the defendant to be affected thereby. In such a case it is only those things said or done in furtherance of the objects of the conspiracy which are chargeable against the other member or members of such conspiracy.

The White Slave Traffic Act should receive a construction, and be applied to facts which will make it efficient to accomplish its intended purpose, but it should not be so enlarged or extended by judicial interpretation, or by the verdict of juries, as to take in transactions which, however reprehensible, cannot be reasonably regarded as within its aim and intent. The conduct of the defendants, however reprehensible, in general, must be such, before you can convict them, as to bring them within the intent and purpose of this act, and no disapprobation that you may have for the business of the defendants, or their general conduct, is sufficient to permit you to convict them, if you have a reasonable doubt of their guilt of the precise crime charged in the indictment.

The conspiracy must have involved an intent to violate said Act above referred to as the White Slave Act; that is to say, that the defendants intended that the women which they would transport, if any, should be placed in a situation as described in the indictment, and hereafter referred to. What was the intent with which the women were to be taken to Mexicali? Was it that they should live an honest, moral and proper life, or were they to be taken to Mexicali for the purpose of entering upon a condition which might be termed debauchery, or which tends to, and which

would necessarily and naturally lead them to a condition of debauchery?

The term "debauchery" is not a legal or technical term. There is no allegation in the indictment that the defendants conspired to transport women with a purpose or with intent to debauch them, but to place them where they would be influenced to enter upon a course of debauchery.

To debauch is to corrupt in morals or principles; to lead astray immorally into dishonest and vicious practices; to corrupt; to lead into unchastity; to debauch. Debauchery, then, is an excessive indulgence of the body; licentiousness; drunkenness; corruption of innocence; taking up vicious habits. The term "debauchery" as used in this statute has the idea of sexual immorality. That is, it is the idea of a life which will lead, eventually, or tends to lead, to sexual immorality.

The question for you to determine, and which is a question which you alone can determine, is whether or not the influences with which the women who, the indictment alleges, the defendants were to transport, were to be surrounded did not tend to induce them to give themselves up to a condition of debauchery which, eventually, necessarily and naturally would lead to a course of immorality sexually. You know by the testimony what was the character and what was the condition or influence under which women were placed by reason of their employment and transportation. Was or was not it a condition that would necessarily and naturally lead to a life of debauchery of a carnal nature, relating to sexual intercourse between men and women?

The language of the statute is directed against the transportation of any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purposes, or with the intent or purpose to induce, entice, or compel such woman or girl to become a prostitute, or to give herself up to debauchery, or to engage in any other immoral practices.

It is not necessary for the Government to prove that the conspiracy was successful. Proof of the formation of the conspiracy and an overt act as charged is all that is required in that regard.

Nor is it necessary for the Government to prove that the women who were actually taken there were debauched. Nor is it necessary for the Government to prove that the surroundings would naturally lead the particular women who were taken there, into a life of debauchery as heretofore defined, provided that the defendants intended that such surroundings should have that effect.

If the defendants took them into surroundings and an environment that would naturally lead to debauchery as aforesaid, then the law is that the defendants intended the natural and necessary consequences of their act.

If the defendants contracted with the women that they took there, to the effect that said women should not become prostitutes, or engage in prostitution, or if they advised the women what to do in the event they were solicited by men to sexual indulgence, or otherwise approached concerning debauchery; if the defendants guarded and protected said women against being approached concerning debauchery or indulgence

in debauchery, to my mind that would be very strong evidence that the defendants knew that the surroundings and environment in which said women were to be placed would naturally lead to debauchery and immoral sexual relations.

Considerable has been said during the trial concerning prostitution that was being carried on at the Owl Cafe, and that what these women saw there would have a tendency to disgust them with prostitution, and to prohibit them from entering into a life of prostitution. In this connection it is my idea that it is a long step from debauchery to prostitution, and many a woman may descend to debauchery or other immoral sexual relations, and yet prostitution be repulsive to her. And you are advised to take into consideration these matters, and to bear in mind that the Government does not charge that these defendants intended that these women should become prostitutes, but simply that they should be debauched.

The fact that the Owl Cafe, the place to which it is alleged in the indictment, the defendants conspired to take women, was conducted legally under the laws of Mexico, is not a defense to this action if the surroundings were such as to lead to the consequences which I have heretofore told you are necessary in order to convict the defendants. Mexico has a perfect right, if she wishes, to authorize such places as the Owl Cafe to be run, and that is none of our business, but if women are taken out of this country to a life that leads to debauchery, Congress has made that our concern.

You are instructed that the defendants in this case

had a right to go upon the witness stand to testify in their own behalf, if they chose to do so. The law, however, expressly provides that no presumption adverse to them is to arise from the mere fact that they did not place themselves upon the witness stand. So, in this case, the mere fact that these defendants have not availed themselves of the privilege which the law gives them, should not be permitted by you to prejudice them in any way. It should not be considered as evidence either of their guilt or innocence. The failure of the defendants to testify is not even a circumstance against them and no presumption of guilt can be indulged in by the jury on account of such failure on their part.

It is not your duty to look for some theory upon which to convict the defendants, but, on the contrary, it is your duty, and the law requires you, if you can reasonably do so, to reconcile any and all circumstances that have been shown, with the innocence of the defendants, and so acquit.

You are at liberty to convict the defendants in this case solely because you believe that the morals of any community or any people would be better on account of the closing up or elimination of an establishment such as has been testified about in this case. Your duty is to determine the guilt or innocence of the defendants, or any of them, of the precise crime charged in the indictment, and, if you are not entirely satisfied of their guilt beyond a reasonable doubt, you should acquit.

Neither the finding of the indictment nor any allegation therein, raises any presumption whatever against

the defendants, but the burden of proof is on the Government, and the law presumes the defendant innocent until proven guilty beyond a reasonable doubt, and this rule applies to every material element of the offense charged. A reasonable doubt is one which is reasonable in view of all the evidence and if, after an impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied of the defendants' guilt, you have a reasonable doubt; but if, after such impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction of the defendants' guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt.

This case, like all cases triable in a court of justice, should be determined by a jury upon the evidence before them, and upon that alone, subject to the rules of law laid down for your guidance by the Court, and no juror acting conscientiously, can base his verdict upon any other consideration.

I instruct you that stipulations entered into by the attorneys in the case are to be regarded by you as evidence in the case, and that the facts stipulated to must be regarded as proven.

Juries are impaneled for the purpose of agreeing upon a verdict, if they can conscientiously do so. It is true that each juror must decide the matter for himself, but he should do so only after a consideration of the case with his fellow jurors, and he should not hesitate to sacrifice his views or opinions of the case when convinced that they are erroneous, even though in so

doing he defer to the views or opinions of others.

The bailiff will hand you verdicts—forms of verdicts. Blanks will be left for the insertion of the word “not” and nothing else will be necessary to cover in the forms of verdict except the word “not,” if you desire to use it, and the date. And when you agree upon a verdict, your foreman shall sign it and return into court. When you retire to consider of your verdict, elect one of your number foreman. And you cannot agree upon a verdict unless you are unanimously of the opinion in favor of the verdict.

MR. COHEN: If your Honor please, I desire to note an exception to each and every instruction offered on behalf of the Government.

We desire to note an exception to each and every instruction offered on behalf of the defendants and not given by your Honor.

We desire to note an exception to your Honor’s comment upon the evidence.

THE COURT: Let the exception be entered accordingly. Swear the bailiff.

(Bailiff sworn and jury retires).

That thereafter, towit, at about the hour of — o’clock A. M. of Saturday May 5th 1917, the jury returned duly and regularly into Court, their verdict finding the said defendant guilty as charged in the indictment.

That the time for sentencing the said defendant was thereupon duly continued by the Court from time to time until the 19th day of June, 1917, upon which date said defendant filed in said Court his motion for a new trial. That thereupon on said date, the Court

duly and regularly heard the motion of said defendant for a new trial and duly and regularly made its order denying said motion, to which ruling the exception of the defendant was duly made and entered, and thereupon, on the same day, defendant filed his motion in said Court in arrest of judgment and the Court thereupon heard the same and duly and regularly made its order denying said motion in arrest of judgment, to which ruling, the exception of the defendant was duly made and entered, and thereupon the Court regularly pronounced sentence upon the defendant, and adjudged that he pay a fine in the sum of One Thousand Dollars, to which sentence the exception of the defendant was duly taken and allowed.

Thereupon, on the 19th day of June, 1917, the defendant duly and regularly filed in said Court his Petition for a Writ of Error, and concurrently therewith his Assignment of Errors. That the Court at said time allowed said Writ of Error and fixed a supersedeas bond upon appeal in the sum of Two Thousand Dollars, to be duly given by the said defendant. That thereafter, to wit, on the 19th day of June, 1917, said defendant gave and filed in said Court his said supersedeas bond in the sum of Two Thousand Dollars which was duly approved and allowed by said Court.

That thereupon on the said 19th day of June, 1917, a Writ of Error was duly issued in said cause, returnable before the United States Circuit Court of Appeals, for the Ninth Circuit.

That thereupon, upon said date, citation upon said Writ of Error was duly issued, served upon the United

States District Attorney and filed with the Clerk of said Court.

The Indictment, Demurrer, Order Overruling Demurrer, Petition for Writ of Error, Assignment of Errors and the various order and proceedings of the Court referred to herein, are fully set out in the printed record on appeal of the Clerk to be filed herein and ordered to be printed herewith.

And, for as much as the evidence and proceedings and matters of exception above set forth do not fully appear of record, the defendant, by his attorney tenders this Bill of Exceptions and prays that the same be signed and sealed by the Court herein, pursuant to the statute in such case made and provided.

Earl Rogers

Chas Scholz

Milton M. Cohen

Attorneys for Defendant.

PRESENTATION OF BILL OF EXCEPTIONS,
NOTICE THEREOF AND STIPULATION
FOR SETTLEMENT AND ALLOWANCE.

Defendant, F. B. Beyer, hereby presents the foregoing as his Bill of Exceptions herein and respectfully asks that the same may be allowed.

Earl Rogers

Chas Scholz

Milton M. Cohen

Attorneys for Defendant

TO ALBERT SCHOONOVER, ESQUIRE,
UNITED STATES DISTRICT ATTORNEY
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA:

You will please take notice that the foregoing constitutes and is the proposed Bill of Exceptions from the defendant in the above entitled action, and the said defendant will ask for allowance of the same.

Earl Rogers

Chas Scholz

Milton M. Cohen

Attorneys for Defendant

Service of the foregoing Bill of Exceptions is hereby acknowledged this 8 day of Sept. 1917.

W. F. Palmer,

Assistant United States District Attorney for the
United States of America.

Stipulation as to correctness of Bill of Exceptions.

It is hereby stipulated that the foregoing Bill of Exceptions is correct and that the same be settled and allowed by the Court.

Earl Rogers

Chas Scholz

Milton M. Cohen

Attorneys for Defendant

W. F. Palmer,

Asst. United States Attorney and Attorney for the
United States of America.

Order allowing Bill of Exceptions and making the same part of the record.

The foregoing Bill of Exceptions having been duly

presented to the Court, the same is hereby duly allowed and signed and made a part of the records in this cause.

Dated this 24th day of Nov. 1917.

Oscar A. Trippet,
Judge.

[Endorsed]: Original. No. 1176 Criminal In the United States District Court in and for the Southern District of California Southern Division United States of America Plaintiff vs. F. B. Beyer, Defendant Proposed Bill of Exceptions filed Sep. 8, 1917 at 25 min past 12 o'clock P. M. Wm. M. Van Dyke, clerk; Murray C. White, deputy. Settled and filed Nov. 24, 1917 at 15 min. past 11 o'clock A. M. Wm. M. Van Dyke, clerk; Murray C. White, deputy. Earl Rogers Charles Scholz & M. M. Cohen 403 California Building Phone Broadway 2626 Los Angeles, Cal. Attorneys for Defendant.

*In the District Court of the United States for the
Southern District of California Southern Division*

UNITED STATES OF AMERICA,

Plaintiff,

v.

WARREN FABIAN, DAN MALONE, and FRANK
BEYER,

Defendants.

No. 1176, Criminal.

Petition for Writ of Error.

Your petitioner, Frank Beyer, one of the defendants in the above entitled cause, brings this, his petition for

a Writ of Error, to the District Court of the United States, in and for the Southern District of California; and, in that behalf, your petitioner says: that, on the 19th day of June, 1917, there was made, given and rendered in the above entitled Court and cause, a judgment against your petitioner whereby your petitioner was adjudged and sentenced to a fine of One Thousand Dollars and your petitioner says that he is advised by his counsel and avers that there was and is manifest error in the records and proceedings had in said cause, and in the making, giving and entering of such judgment and sentence, to the great injury and damage of your petitioner, and each and all of these errors will be more fully made to appear by an examination of said records, and by an examination of the Bill of Exceptions to be hereafter, by your petitioner, tendered and filed, and the Assignment of Errors which is filed with this petition, and, to that end, that the judgment, sentence and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner prays that a Writ of Error may be issued, directed therefrom, to the said District Court of the United States, for the Southern District of California, Southern Division, returnable according to law and the practice of the Court, and that there may be directed to be returned, pursuant thereto, a true copy of the record, Bill of Exceptions, Assignment of Errors, and all proceedings had and to be had in said cause, and that the same may be removed unto the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the error, if any has

happened, may be duly corrected and full and speedy justice done your petitioner.

And your petitioner makes the Assignment of Errors filed herewith, upon which he will rely, and will be made to appear by a return of the said record in obedience to said Writ.

WHEREFORE, your petitioner prays the issuance of a Writ as herein prayed and that the Assignment of Errors filed herewith may be considered as his assignment upon the Writ, and that the judgment rendered in this cause may be reversed and held for naught, and that said cause be remanded for further proceedings, and that he be awarded a supersedeas upon said judgment and all necessary process, including bail.

Frank Beyer,
Petitioner

Earl Rogers
Chas. Scholz
Milton M. Cohen,
Attorneys for Defendant.

[Endorsed]: No. 1176, Crim. In the United States District Court in and for the Southern District of California Southern Division United States of America Plaintiff vs. Warren Fabian, Dan Malone and Frank Beyer, Defendants Petition For Writ Of Error (Frank Beyer) Received copy of the within Petition this 19 day of June 1917 W. F. Palmer Assist. U. S. Atty Filed Jun 19, 1917. Wm. M. Van Dyke, clerk; by Geo. W. Fenimore, deputy clerk. Earl Rogers Charles Scholz & Milton M. Cohen 403 California

Building Phone Broadway 2626 Los Angeles, Cal.
Attorneys for Defendants

*In the District Court of the United States for the
Southern District of California Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

v.

WARREN FABIAN, DAN MALONE, and FRANK
BEYER,

Defendants.

No. 1176, Criminal,

Assignment of Errors.

Comes now Frank Beyer, the defendant above named, and files the following statement and assignment of errors, upon which he will rely in the prosecution of a writ of error of the above entitled cause, a petition for which writ, on behalf of said defendant, is filed at the same time with this assignment.

I.

The Court erred in overruling the demurrer of the defendant to the indictment in said cause, for the following reasons:

a. That said indictment does not state facts sufficient to constitute a public offense, or any offense or crime against the laws or statutes of the United States of America.

b. That said indictment does not substantially conform to or comply with the requirements of Section 950 of the Penal Code of the State of California, the state in which this Court is holden.

c. That said indictment does not substantially conform to or comply with the requirements of Section 951 of the said last mentioned code.

d. That said indictment does not substantially conform to or comply with the requirements of Section 952 of the said last mentioned code.

e. That said indictment is not direct or certain as respects the particular circumstances of the offense attempted to be charged, and that said circumstances are necessary to be alleged in order to constitute a complete offense.

That said indictment is not direct or certain sufficiently to inform the defendants of the particular circumstances of the offense with which they are attempted to be charged.

That said uncertainty consists in the following matters:

That it is not alleged in the said indictment, that the defendants conspired to transport or cause to be transported, or to aid or assist in obtaining transportation for, or in transporting, in foreign commerce, from the City of Los Angeles, State of California, or elsewhere, to the town of Mexicali, in the Republic of Mexico, or elsewhere, certain women or girls, for the purpose of debauchery within the purview of the statute mentioned in said indictment.

It is nowhere alleged in said indictment that the women or girls mentioned in said indictment were transported for, or for the purposes of, prostitution, debauchery, or other immoral purpose of the same kind, or that the said girls, as a matter of fact, did commit any such acts or things.

It is not alleged in said indictment that the defendants conspired to transport or cause to be transported, or to aid or assist in obtaining transportation for, or in transporting, in foreign commerce, any women or girls, for any sexually immoral purpose, or that any acts specified in said indictment were by defendants intended to result in the commission of said immoral acts in the statute named, prohibited or set forth.

It is not alleged in said indictment that any of the immoral acts attempted to be set forth as purposes for which the said women or girls were transported or caused to be transported were by defendants intended to conduce or lead to sexual immorality, prostitution, debauchery, or other immoral acts of the same kind, or that said acts were calculated by defendants to lead or cause said women or girls to commit said immoral acts of said kind.

There is no allegation in said indictment of the commission of any sexually immoral acts on the part of any women or girls transported or caused to be transported by defendants.

f. Said indictment further is uncertain and insufficient in this, that the specific acts set forth in said indictment, as respects each defendant, or the overt acts alleged as respects each defendant, are not alleged to have been intended by the defendants to, or calculated to, conduct to or cause any of the immoral acts prohibited by the statute mentioned, or referred to in the statute mentioned, as the purpose for which said women or girls were transported, or caused to be transported.

g. Said indictment further is uncertain and insufficient in that it is nowhere alleged in said indictment

that defendants, or any of them, conspired to transport or cause to be transported, or to aid or assist in obtaining transportation in foreign commerce of any women or girls who did commit, or were by defendants intended to commit, or to attempt to commit, or by defendants caused, enticed or induced to commit or to attempt to commit, or by any person caused, enticed or induced to commit, or to attempt to commit, any acts of sexual immorality whatever, or any acts of prostitution, debauchery, or other immoral acts of the same kind.

h. That the grand jury by which the indictment was found had no legal authority to inquire into the offense charged.

i. That the indictment shows, upon its face, that all overt acts alleged to have been committed in pursuance of the alleged conspiracy are alleged to have been committed after the return of said indictment.

j. That the said indictment was filed on the twentieth day of December, 1916, and is alleged to have been found and returned on the second day of January, 1916, and the conspiracy is alleged to have been formed on the first day of January, 1916, namely, one day before the finding of the indictment, and the overt acts committed in pursuance thereof are alleged to have been performed at various dates later than the finding and return of said indictment, to-wit: in January, 1916.

And the defendants exception to the overruling of said demurrer was duly taken and allowed.

II.

The Court erred in denying the motion of the de-

fendant, Frank Beyer, to quash the indictment in said cause, for the following reason:

a. That said indictment was not found, returned, presented, or endorsed or filed in the manner prescribed by law, nor was the said indictment returned by a Grand Jury having jurisdiction to hear testimony or return an indictment in the matter pending, nor was the said indictment filed when presented or returned.

And the defendant's exception to denial of the motion to quash the indictment was duly taken and allowed.

III.

The court erred in overruling the objection of the defendant to the questions propounded to the witness, Sallie Margaret Claxton, in reference to a conversation which the witness had with defendant, which questions, objections, answers and exceptions are as follows:

Q Now, did you have any conversation with the defendant Warren Fabian about going to Mexicali?

MR. ROGERS: That is objected to as incompetent, irrelevant and immaterial, and no foundation has been laid. I think the same objection that the authority of Mr. Fabian has not been shown to bind the others, and particularly with respect to a conversation he may have had, in view of the concession of counsel that the so-called conspiracy evidence will consist of employment to do certain things in a certain way—in other words, he was an employee, and therefore bound by the terms of his employment, until some conspiracy of another sort is shown, if counsel can do it; but I think that ought to be shown first, and the foundation laid.

THE COURT: Well, the evidence is undoubtedly admissible against Fabian, and would not bind the others unless it is shown that a conspiracy existed prior to the time that it was done, and existed at that time, and that this was part of the scheme, or in furtherance of it, or something or part of the *res gestae*.

MR. PALMER: Of course, your Honor, if we would offer the suggestion—

THE COURT: The objection will be overruled. Proceed.

MR. ROGERS: We except.

IV.

The Court erred in overruling the objection of the defendant to the following questions propounded by plaintiff to the witness, Sallie Margaret Claxton. (P. 60 of Transcript):

Q You knew what they were going back there for, didn't you?

A. Why it was plain enough to be seen.

Q. Anyone could see what that was?

MR. ROGERS: I object to that as calling for a conclusion or opinion and incompetent, irrelevant and immaterial.

THE COURT; The objection will be sustained.

MR. ROGERS: I move to strike out that answer, "It was plain enough to be seen," as incompetent irrelevant and immaterial and not responsive.

MR. PALMER: I think, your Honor, that it is not open to that objection.

THE COURT: Well, I would not sustain the position of the United States Attorney on that propo-

sition. I think the evidence, however, is material, and a proper answer, and a proper case for the witness to give an opinion on. The motion will be denied.

MR. ROGERS: Exception.

Q BY MR. PALMER: How many women were there that stayed in the rooms back of the dance hall that you speak of?

MR. ROGERS: Objected to.

A I couldn't tell you.

Q By MR. PALMER: Was there more than one?

MR. ROGERS: Objected to.

A Yes sir.

MR. ROGERS: I think the witness has plainly stated that she has never been back there, and she never went back of that dressing room, and I don't think she can tell from her own knowledge how many women did live back there, or stayed there, as counsel says now, and it is incompetent, irrelevant and immaterial. The witness answered so quickly I could not object.

THE COURT: Well, I will not regard that, Mr. Rogers. If I thought the evidence was immaterial or impertinent, I would strike it out, but I think the answer is—the question and answer are both appropriate. The jury will judge the materiality of it, or the weight of it, I mean.

MR. ROGERS: We except.

V.

The Court erred in overruling the objection of the defendant to the following questions propounded by the plaintiff to the witness Sallie Margaret Claxton (Page 75 of Reporter's Transcript):

Q BY THE PLAINTIFF: Mrs. Claxton, at the time that you were employed in the Owl Cafe, were you, while you were engaged in that employment, on the dance floor, and about that house, at any time, solicited by men to have illicit sexual relations with them?

MR. ROGERS: Objected as incompetent, irrelevant and immaterial, no foundation laid; hearsay so far as the defendants are concerned; and the time and place and persons present not stated; no foundation laid, in that the defendants are not shown to have had any relation to the matter.

THE COURT: The objection will be overruled.

MR. ROGERS: Note an exception.

MR. PALMER: Read the question.

(Last question read by the Reporter)

A No sir.

Q What was said to you, if anything, at the time you had the conversation with Dan Malone in Los Angeles about how much the expense was on a trip to Calexico.

MR. ROGERS: That is objected to upon the ground that no foundation has been laid for it; it is leading and suggestive. I will not object, except on the part of other defendants, for the lack of foundation to a question which would show what did Mr. Malone say, but it is leading and suggestive.

THE COURT: The objection will be overruled.

MR. ROGERS: Note an exception.

VI.

The Court erred in overruling the objection of the defendant to the following questions propounded by

the plaintiff to the witness Sallie Margaret Claxton (Page 129 of Reporter's Transcript):

Q BY MR. PALMER: What was the largest amount that you got at the end of the day during the first week while you were at the old place from the percentage on drinks?

MR. ROGERS: May my objection follow this line of interrogation?

THE COURT: Yes, sir.

MR. ROGERS: And my exception, also?

THE COURT: Yes.

MR. PALMER: Read the question.

(Last question read by the reporter.)

A Eleven Dollars, I think it was—eleven or twelve; somewheres in there.

Q What was done with the men who drank in that part of the house when they became intoxicated?

MR. ROGERS: Objected to as assuming a fact not in evidence, irrelevant, incompetent and immaterial, no foundation laid, no showing that any man did become intoxicated.

THE COURT: Objection overruled.

MR. ROGERS: Exception.

THE COURT: Answer the question.

A I don't know; I guess they must have went home. There was not anybody back in there. They never stayed until they got intoxicated.

The testimony of the witness, Sallie Margaret Claxton, in reference to the matters in issue, upon failure of the Government to show its connection, or to show any intent on the part of the defendant either to trans-

port, or aiding or persuading to transport, any woman for immoral purposes, et cetera, or tending, in any way, to show their debauchment or the tendency of the surroundings to lead to their debauchment, was so highly prejudicial in its character that, in view of all the other evidence in the case, it is shown that, by its admission, the jury were lead to convict the defendant by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause.

VII.

The Court erred in overruling the objection of the defendant to the following questions propounded by the plaintiff to the witness Miss Alma Person (Page 149 of Reporter's Transcript):

Q Now, what was said in that conversation, and who said it?

MR. ROGERS: Objected to as incompetent, irrelevant and immaterial, and hearsay.

THE COURT: Objection overruled.

MR. ROGERS: And no foundation laid. Exception.

A Mr. Fabian was telling me about the place down there, and asked me if I would want to go down.

VIII.

The Court erred in overruling the objection of the defendant to the following questions propounded by the plaintiff to the witness Miss Alma Person (Page 152 of Reporter's Transcript):

Q Last year, March, 1916. Now, what, if anything, was said to you, and by whom was it said, about how you should go?

MR. ROGERS: Objected to as incompetent, irrele-

vant and immaterial, and not binding on the defendants.

THE COURT: Objection overruled.

MR. ROGERS: Exception, please.

THE COURT: Answer the question, please.

A I didn't understand that.

MR. PALMER: Well, I will change the question.

Q Did Mr. Fabian or Mr. Malone tell you where to go, to start?

MR. ROGERS; That is objected to for the same reasons—I beg pardon.

Q BY MR. PALMER: (Continuing)—or what did they say to you about that?

MR. ROGERS: Objected to for the same reasons.

A To go to Calexico?

Q Yes.

A He said we were to go to Calexico, and live on the American side and work on the Mexican side.

Q Was there anything said to you by either of those men about the station you were to go to, and when you were to go?

A No, they did not tell us when; they told us when we did take a train to get off at Calexico.

Q Was anything said to you about what railroad to go over, and when you were to start?

A No; Mrs. Fabian took me; I went with Mrs. Fabian.

Q How is that?

A I went with Mrs. Fabian to the train.

Q Went with Mrs. Fabian?

MR. ROGERS: I move to strike that answer out, because it is incompetent, irrelevant and immaterial

and not binding upon the defendants, and no foundation.

THE COURT: Objection overruled, and motion denied.

MR. ROGERS: Exception.

Q. BY MR. PALMER: Now, when you went to the station, who did you meet there?

A Well, nobody.

IX.

The Court erred in overruling the objection to the defendant to the following questions propounded by the plaintiff to the witness Miss Alma Person (Page 154 of Reporter's Transcript):

Q. Now, did you receive any money at the station to pay your fare with?

A Mrs. Fabian gave us the money.

MR. ROGERS: I object to that as hearsay, incompetent, irrelevant and immaterial, and not connected with the defendants. No issue is made on that, and no foundation has been laid, and I move to strike the answer out. Please don't answer so rapidly. I would like to object occasionally.

THE COURT: Well, so far, the answer is immaterial. It does not relate to the defendants. She said Mrs. Fabian furnished the money.

Q BY MR. PALMER: How much money did she give you?

MR. ROGERS: Objected to as incompetent, irrelevant and immaterial and not within the issues, and no foundation laid.

MR. PALMER: The indictment, your Honor,

charges that these defendants and others were engaged in this conspiracy.

MR. ROGERS: That has not been proven. The fact it is charged does not make any difference.

THE COURT: Mr. Rogers, they could claim that Mrs. Fabian was in this conspiracy and one of the conspirators.

MR. ROGERS: I know they could claim it, if your Honor pleases, but they have ousted themselves from that claim by calling her to the witness stand a few moments ago. They know they cannot call a defendant.

MR. PALMER: She is not a defendant.

MR. ROGERS: And they must, of course, prove their conspiracy first. They cannot assume that because the indictment so charges, that a person is in a conspiracy, without any showing to that effect.

THE COURT: Well, I think it is material to show that she got the money from somebody else and did not pay her own way there; and if they can connect it up with the defendants, let them do it. The objection will be overruled.

MR. ROGERS: We except.

MR. PALMER: Read the question, please.

(Question read)

A Ten dollars.

Q How much, if any, did she give to Anna Gregory?

MR. ROGERS: The same objection.

THE COURT: Overruled.

MR. ROGERS: We except.

A Ten Dollars.

Q BY MR. PALMER: Was she with you when you bought your ticket?

A Yes sir.

MR. ROGERS: May my objection follow this whole matter?

THE COURT: Yes, sir, you may have an objection and exception—an objection to all questions concerning the buying of this woman's ticket, and the others by Mrs. Fabian, and to the ruling of the court an exception.

X.

The Court erred in overruling the objection of the defendant to the following questions propounded by the plaintiff to the witness Miss Alma Person (Page 174 of Reporter's Transcript):

Q Do you know whether that was a crib room?

A I don't know; I never saw the door open, or nothing.

Q Never saw the door open. Did you see women there that were practicing prostitution?

MR. ROGERS: Objected to as calling for a conclusion or opinion, incompetent, irrelevant and immaterial, and no foundation laid.

MR. PALMER: I will change the question.

THE COURT: I think the witness has got a right to state how far she knows about it.

MR. ROGERS: We except.

THE COURT: Answer the question.

(Question read)

A I didn't know what they were doing.

Q BY MR. PALMER: Did you see women and men going together back into that hallway?

MR. ROGERS: The same objection as before made.

THE COURT: Objection overruled.

MR. ROGERS: We except.

XI.

The Court erred in overruling the objection of the defendant to the following questions propounded by the plaintiff to the witness Miss Alma Person (Page 177 of Reporter's Transcript):

Q BY MR. PALMER: You knew what the other women were doing there, did you?

MR. ROGERS: Objected to as incompetent, irrelevant and immaterial, and not within the issues, and no foundation laid.

THE COURT: What is the question?

(Question read)

THE COURT: The objection will be overruled.

MR. ROGERS: We except again.

A Well, I knew in a way; I didn't know very much about it.

Q By Mr. Palmer: That is, you never saw what they did?

A No sir.

XII.

The Court erred in overruling the objection of the defendant to the following questions propounded by the plaintiff to the witness Miss Alma Person (Page 199 of Reporter's Transcript):

Q BY THE COURT: You knew there were women there who were prostitutes, did you, at the time?

A I didn't know they were prostitutes.

MR. ROGERS: I object to calling for the conclusion or opinion of the witness, if your Honor pleases. Her idea that they were prostitutes, I have no objection to your Honor inquiring for, but to characterize them as her knowing them to be such. I must ask your Honor—

Q BY THE COURT: Were there women there that were reputed to be prostitutes?

A I didn't know.

Q You didn't know?

A No sir.

Q There were women there that you were asked not to associate with?

A Yes sir.

Q Why were you directed not to associate with them?

A I was never told.

Q Never told why?

A No sir.

Q You knew these women roomed back of the cafe there, in back of the stage?

A I didn't know where they roomed. I saw them go back there, but I didn't know if they lived there or not.

Q You saw them go back there with men?

A Sometimes.

Q And you had an idea of the purpose for which they were going?

A No sir.

Q You did not. Now did you feel ashamed by being brought in contact, as you were, with those women?

MR. ROGERS: I object to that, if your Honor

pleases, "being brought in contact as you were," upon the ground that the witness has said she never spoke to any of them; she never sat with any of them, or ate with any of them, or drank with any of them.

The testimony of the witness, Miss Alma Person, in reference to the matters in issue, upon the failure of the Government to show its connection, or to show any intent on the part of the defendant, either to transport, or aiding or persuading to transport, any women for immoral purposes, et cetera, or tending, in any way, to show their debauchment or the tendency of the surroundings to lead to their debauchment, was so highly prejudicial in its character that, in view of all the other evidence in the case, it is shown that, by its admission, the jury were led to convict the defendant by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause.

XIII.

The District Attorney, by his conduct (Reporter's Transcript, page 220) committed prejudicial error in making declaration before the jury which prejudiced the minds of the jury towards the defendant, as will appear by statement of Mr. Palmer.

MR. PALMER: Who has been, by the objection of counsel, prevented from being examined.

MR. ROGERS: I take exception to the statement of counsel in these circumstances and characterize it as legal misconduct. I don't speak of it as personal misconduct, you understand, but I take exception as legal misconduct.

The fact of the District Attorney's statement in the

presence of the jury that a witness had been prevented from being examined on account of objection of counsel for defendant, and the fact that the reason for the witness, Mrs. Warren Fabian, not testifying was on account of the ruling of the Court, the defendant hereby assigns the statement of the District Attorney as error and misconduct for the reason that it was so highly prejudicial in its character that, in view of all the other evidence in the case, it is shown that, by the District Attorney's statement, the jury were led to convict the defendant by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause.

XIV.

The Court erred in overruling the objection of the defendant to the following questions propounded by the plaintiff to the witness Grace Covert (Page 220 of Reporter's Transcript):

Q BY MR. PALMER: Did you receive any communication from Mrs. Fabian in answer to your letter?

MR. ROGERS: Objected to as immaterial, incompetent and irrelevant, on the ground that Mrs. Fabian is not shown to be a party to the conspiracy.

THE COURT: I will overrule the objection.

MR. PALMER: Read the question.

(Last question read by the Reporter)

A Yes, I got a telegram.

The testimony of the witness, Miss Grace Covert, in reference to the matters in issue, upon failure of the Government to show its connection, or to show any intent, on the part of the defendant, either to transport or aiding or persuading to transport, any women

for immoral purposes, et cetera, or tending, in any way, to show their debauchment or the tendency of the surroundings to lead to their debauchment, was so highly prejudicial in its character that, in view of all the other evidence in the case, it is shown that, by its admission, the jury were led to convict the defendant by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause.

XV.

The Court erred in overruling the objection of the defendant to the questions propounded to the witness, Grace Covert, in reference to a contract alleged to have been the one witness was working under, which questions, objections, answers and exceptions are as follows: (P. 227 of Transcript)

Q This is the contract that you worked there under, is it?

A Yes sir.

MR. ROGERS: Well, that is calling for a conclusion and opinion, and incompetent. The circumstances of her signing it may possibly be competent, but that is certainly a conclusion.

MR. PALMER: We offer the contract in evidence.

MR. ROGERS: Objected to as no foundation laid, irrelevant, incompetent and immaterial.

THE COURT: Let me see it. (Receiving paper from Mr. Palmer) I am inclined to think, Mr. Palmer, you should prove the execution of the contract by the other party, or have some evidence on the subject.

Q BY MR. PALMER: Did you see the contract written?

A I don't remember.

Q You don't remember? Is that your signature there? (Exhibiting paper to the witness)

A Yes sir.

Q Do you know Dan Malone?

A Yes sir.

Q Don't you know that Dan Malone wrote that contract? A No.

Q Did you see him sign his name to it there?

A I don't remember.

Q You don't remember? Your Honor, we offer this in evidence.

MR. ROGERS: Objected to, no foundation laid, incompetent, irrelevant and immaterial.

THE COURT: Is that the contract, you say, under which you worked?

A Yes sir.

THE COURT: I will overrule the objection.

THE CLERK: Government's Exhibit No. 3.

THE COURT: What exhibit is it marked?

THE CLERK: No. 3, your Honor, Government's Exhibit 3.

MR. PALMER: (Reading)

THEATRICAL CONTRACT.

Mexicali, B. C., Mexico, March 28, 1916.

Contract between Grace Claire and the Owl Cafe.

I, Grace Claire, this day and date, March 28th, 1916, at Mexicali, Mexico, enter into the following described contract:

Indefinite engagement at \$30 per week for a period of 2 weeks, and \$25 for the following indefinite weeks, to appear in chorus act commencing March 28, 1916;

to appear not to exceed six acts each evening. Working hours 7:30 p. m. to 3 p. m.

Privilege retained by the Owl Cafe for an extended engagement.

Disorderly conduct or prostitution shall be cause for immediate dismissal and cancellation of this contract.

Percentage on drinks for women 40 per cent, except Schlitz beer, which shall be 50 per cent.

All performers to be governed by house rules.

Witness our hands and seal this 28th day of March, 1916, at Mexicali, B. Cfa., Mexico.

The Owl Cafe, By D. Malone.

Grace Claire.

Without laying any foundation for the admission of the Government's exhibit three (3), and upon the objection being made that the evidence was incompetent, irrelevant and immaterial, the defendant hereby assigns its admission in evidence as error, for the reason that it was highly prejudicial in its character, and that, in view of all the other evidence in the case, it is shown that, by its admission, the jury were led to convict the defendant by reason of passion and prejudice and upon testimony erroneously admitted, and not upon the legal evidence introduced at the trial of said cause, and the exception of the defendant to such objection and ruling of the Court was duly taken and allowed.

XVI.

The Court erred in overruling the objection of the defendant to the question propounded by the plaintiff to the witness Barney Morris (Page 263 of Reporter's Transcript) :

Q BY MR. PALMER: Now, I will ask you, sir, whether or not the name that you have just seen there, F. B. Beyer, on this exhibit 4 for identification, is the signature of F. B. Beyer?

MR. ROGERS: Objected to as no foundation laid, incompetent, irrelevant and immaterial. The foundation as an expert is not laid, and the matter itself is immaterial.

THE COURT: Objection overruled.

MR. PALMER: Read the question.

(Question read)

A The signature is rather crowded there, although it looks like the signature.

Q It looks like the signature of Mr. Beyer, as you know it?

A Yes, it does.

MR. ROGERS: The same objection.

Q BY MR. PALMER: Would you say it is his signature?

A. I would not swear to it; it looks like his signature.

MR. ROGERS: I wanted you not to answer until I had a chance to object.

A I beg your pardon.

MR. ROGERS: I am objecting as incompetent, irrelevant and immaterial, and no foundation laid. If my objection may follow this all the way through, I won't continue to repeat it.

THE COURT: The objection may follow it. Objection overruled.

MR. PALMER: Now, your Honor, we offer in

evidence the paper that has just been marked as United States Exhibit 4.

MR. ROGERS: It is objected to; no foundation laid, not properly identified, incompetent, irrelevant and immaterial.

THE COURT: Let's see it.

(The paper was handed to the Court)

Q BY THE COURT: What did you say your name was?

A Barney Morris.

Q How many times have you seen the signature of F. B. Beyer?

A Oh, a number of times.

Q Have you had correspondence with him?

A Yes, I have had a few letters.

Q Now, in your opinion, is this his signature, or is it not?

A It looks like his signature.

Q Well, what is your opinion about it?

A My opinion is that it is his signature.

THE COURT: The objection will be overruled.

MR. PALMER: (Reading)

PLAINTIFF'S EXHIBIT 4

THEATRICAL CONTRACT, Mexicali, B. C., Mexico. 3/19/16. Contract between Lela Cavell and the Owl Cafe.

I, Lela Cavell, this day and date, March 19, at Mexicali, Mex., enter into the following described contract: Two weeks engagement at \$30 per week, for a period of two weeks, and \$25 for the following weeks, to appear in chorus act, commencing 3/19/16,

to appear not to exceed six acts each evening. Working hours 7:30 p. m. to 3 a. m.

Privilege retained by the Owl Cafe for an extended engagement. Disorderly conduct or prostitution shall be cause for immediate dismissal and cancellation of this contract.

Percentage on drinks for women, 40 per cent. except Schlitz beer, which shall be 50 per cent., All performers to be governed by house rules.

Witness our hands and seal this 19th day of March, 1916, at Mexicali, B. Cfa. Mexico.

The Owl Cafe, by F. P. Beyer,
Lela Cavell.

Without laying any foundation for the admission of the Government's exhibit four (4), and upon the objection being made that the evidence was incompetent, irrelevant and immaterial, the defendant hereby assigns its admission in evidence as error, for the reason that it was highly prejudicial in its character, and that, in view of all the other evidence in the case, it is shown that, by its admission, the jury were led to convict the defendant by reason of passion and prejudice and upon testimony erroneously admitted, and not upon the legal evidence introduced at the trial of said cause, and the exception of the defendant to such objection and ruling of the Court was duly taken and allowed.

XVII.

The Court erred in overruling the objection of the defendant to the questions propounded by the plaintiff to the witness C. F. Willard (Page 285 of Reporter's Transcript):

Q BY MR. PALMER: Mr. Willard, I will ask you to state whether or not you sold to Mrs. Warren Fabian two tickets to be telegraphed to Bisbee, Arizona, to be used from Bisbee, Arizona, to Calexico, California, by Grace Claire and Grace Fay?

MR. ROGERS: Objected to as irrelevant, incompetent and immaterial, and no foundation laid, and not within the issues.

THE COURT: The objection will be overruled.

A Yes sir, I did.

Q BY MR. PALMER: When?

A March 25th, 1916.

MR. ROGERS: May my objection follow this whole line?

MR. PALMER: Oh yes.

Q If you know whether or not the tickets were actually telegraphed to Bisbee, Arizona, you may state.

MR. ROGERS: Objected to as irrelevant, incompetent and immaterial, calling for a conclusion or opinion, no foundation laid, and not the best evidence.

THE COURT: The objection is overruled.

A Yes sir; they were.

XVIII.

The Court erred in overruling the objection of the defendant to the questions propounded by the plaintiff to the witness C. F. Willard (Page 295 of Reporter's Transcript):

MR. ROGERS: I move to strike out all reference to the ticket or to the stub, or writing, on the ground that no foundation has been laid; it is incompetent,

irrelevant and immaterial, and the testimony is not the best evidence.

THE COURT: The motion will be denied. Call your next witness.

The testimony of the witness, C. F. Willard, in reference to the matters in issue, upon failure of the Government to show its connection, or to show any intent on the part of the defendant, either to transport, or aiding or persuading to transport, any women for immoral purposes, et cetera, or tending, in any way, to show their debauchment or the tendency of the surroundings to lead to their debauchment, was so highly prejudicial in its character that, in view of all the other evidence in the case, it is shown that, by its admission, the jury were led to convict the defendant by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause.

XIX.

The Court erred in rendering its judgment in this cause against the defendant for the reason that the indictment in said cause does not charge the defendant with any offenses against or violation of the laws of the United States of America.

XX.

The Court erred in rendering its judgment in this cause against the defendant for the reason that the evidence introduced at the trial of said cause was not sufficient to justify the verdict of the jury therein or the judgment of the Court against the defendant.

XXI.

The Court erred in rendering its judgment in this cause against the defendant for the reason that the

testimony did not show or tend to show that the defendant had committed any offense set out, or attempted to be set out, in the indictment.

XXII.

The Court erred in rendering its judgment in this cause, against the defendant, for the reason that the testimony introduced at the trial of said cause did not tend to connect the defendant with the commission of any offense set out in the indictment.

XXIII.

The Court erred in rendering its judgment in this cause against the defendant for the reason that the testimony introduced at the trial of said cause did not show, or tend to show, that the defendant did, knowingly or otherwise, persuade, induce and entice any women to go from one place to another in foreign commerce.

XXIV.

The Court erred in giving the following instruction to the jury: (P. 7 Reporter's Tr. of Instructions)

The term "debauchery" is not a legal or technical term. There is no allegation in the indictment that the defendants conspired to transport women with a purpose or with intent to debauch them, but to place them where they would be influenced to enter upon a course of debauchery.

To debauch is to corrupt in morals or principles; to lead astray immorally into dishonest and vicious practices; to corrupt; to lead into unchastity; to debauch. Debauchery, then, is an excessive indulgence of the body; licentiousness; drunkenness; corruption of innocence; taking up vicious habits. The term "debauch-

ery" as used in this statute as the idea of sexual immorality. That is, it is the idea of a life which will lead, eventually, or tends to lead, to sexual immorality.

The question for you to determine, and which is a question which you alone can determine, is whether or not the influences with which the women who, as the indictment alleges, the defendants were to transport, were to be surrounded did not tend to induce them to give themselves up to a condition of debauchery which, eventually, necessarily and naturally would lead to a course of immorality sexually. You know by the testimony what was the character and what was the condition or influence under which women were placed by reason of their employment and transportation. Was or was not it a condition that would necessarily and naturally lead to a life of debauchery of a carnal nature, relating to sexual intercourse between men and women?

The language of the statute is directed against the transportation of any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purposes, or with the intent or purpose to induce, entice, or compel such woman or girl to become a prostitute, or to give herself up to debauchery, or to engage in any other immoral practices.

It is not necessary for the Government to prove that the conspiracy was successful. Proof of the formation of the conspiracy and an overt act as charged is all that is required in that regard.

Nor is it necessary for the Government to prove that the women who were actually taken there were debauched. Nor is it necessary for the Government

to prove that the surroundings would naturally lead the particular women who were taken there, into a life of debauchery as heretofore defined, provided that the defendants intended that such surroundings should have that effect.

If the defendants took them into surroundings and an environment that would naturally lead to debauchery as aforesaid, then the law is that the defendants intended the natural and necessary consequences of their act.

If the defendants contracted with the women that they took there, to the effect that the said women should not become prostitutes, or engage in prostitution, or if they advised the women what to do in the event that they were solicited by men to sexual indulgence, or otherwise approached concerning debauchery; if the defendants guarded and protected said women against being approached concerning debauchery or indulgence in debauchery, *to my mind that would be very strong evidence that the defendants knew that the surroundings and environment in which said women were to be placed would naturally lead to debauchery and immoral sexual relations.*

Considerable has been said during the trial concerning prostitution that was being carried on at the Owl Cafe, and that what these women saw there would have a tendency to disgust them with prostitution, and to prohibit them from entering into a life of prostitution. In this connection it is my idea that it is a long step from debauchery to prostitution, and many a woman may descend to debauchery or other immoral sexual relations, and yet prostitution be repulsive to

her. And you are advised to take into consideration these matters, and to bear in mind that the Government does not charge that these defendants intended that these women should become prostitutes, but simply that they should be debauched.

The fact that the Owl Cafe, the place to which it is alleged in the indictment, the defendants conspired to take women, was conducted legally under the laws of Mexico, is not a defense to this action if the surroundings were such as to lead to the consequences which I have heretofore told you are necessary in order to convict the defendants.

to the giving of which instructions the exception of the defendant was duly taken and allowed.

XXV.

The Court erred in refusing to give the jury the following instructions requested by the defendant to which refusal the defendant objected and excepted:

You are instructed that intent with which an act is done is a material element of the crime, if such act is, by day, made a crime. While every man is presumed to intend the natural and probable consequence of his act which he voluntarily does, yet, a necessary and substantial element of any offense is a criminal intent. If you have a reasonable doubt as to whether or not the defendants intended that the women and girls referred to in the indictment should give themselves up to debauchery, or to the practice of other immoral acts of a sexual nature, or prostitution, then you must acquit the defendants. The intent with which an act is done is a material element to be considered, and you

are not at liberty to disregard the question of intent, and, if you have a reasonable doubt upon this matter of intent, as I have instructed you, you must give the benefit of this doubt to the defendants, and acquit them.

The standards of morality may, and doubtless do, differ between two countries. Each country has a right to determine, for itself, by law, what acts may be done and what acts may not be done in such country, and, though an act may be forbidden by the laws of California or the laws of the United States, yet, if such act is permitted and made lawful by the laws of the Republic of Mexico, in certain circumstances and conditions, where those circumstances exist and those conditions are complied with, such act or acts cannot be considered as unlawful or immoral because of a different standard of immorality or a different law existing in the United States, or in the State of California.

Where the laws of the Republic of Mexico permit a thing to be done, under license, in that country, the doing of such act in that country cannot be considered by you as legally forbidden or as unlawful, because such act may, perchance, be unlawful in this Country.

The defendants are charged with a conspiracy to transport certain women named in the indictment to a foreign country for the purposes which have been referred to in these instructions. There is, in evidence before you, a stipulation which you are to regard as evidence that the laws of the Republic of Mexico make the practice of prostitution lawful, in certain circumstances and in certain conditions, and

that licenses for such practice are issued to various persons, and that such laws make the playing and conducting of certain games of chance lawful, and that licenses are issued for the operation of such games, and that the sale of liquor is licensed and lawful in the Republic of Mexico.

In considering whether or not the defendants conspired to transport the girls and women referred to for immoral purposes, you must consider that the laws of Mexico make the acts, just now mentioned, lawful and permissible. It is, therefore, not to be considered by you that the laws of the United States or the laws of the State of California make such practices or things unlawful. The government of the country where acts are performed has sole jurisdiction to determine the quality of those acts, and the fact that such acts are made unlawful or considered immoral in another country is of no consequence.

No act, which is lawful in a foreign country, is legally immoral or unlawful because such act is forbidden by the statutes and laws of another country, such as the United States for instance, or the State of California.

No act can be considered as immoral, in the legal sense, which is licensed and permitted by the laws of the country in which it is done.

XXVI.

The District Attorney, by his conduct (Pages 30 and 31, Transcript of Closing Argument to the Jury), committed prejudicial error in addressing the jury upon a vital point concerning which the evidence was

absolutely contrary to his statement, which evidence, objections and exceptions appear as follows:

(MR. PALMER) Now, gentlemen, I want to know why it was, if these girls were absolutely protected when they were first taken down there in March, 1916, and that no man ever made any proposition that was illegal or immoral to them, that no man ever visited their rooms, that no man ever went with them to their rooms,—I want to know why it was they added upon this contract these other contracts, and said they must not take men to their rooms where they lived. What was the reason for adding that? Why was it excepted, gentlemen? And afterwards that was printed in the contracts that were shown you by Mr. Rogers and introduced in evidence here; that thing was afterwards printed in the contract, after it had been written. Now, why was it, if these girls never heard of anything immoral, if it never was suggested to them, if no one ever visited them in their rooms,—why was that change made in the contract? That is what I want to know. Why, the evidence shows this, that these men knew that the girls there were having visitors in their rooms where they lived, in the Virginia Hotel, and they had to put that in there so they could control that thing. That is what the evidence shows.

MR. COHEN: Excuse me, Mr. Palmer. Once again, if your Honor please, I desire to except to the District Attorney's remarks. There is no evidence here that shows that the girls were having men come into their rooms. I desire to except to that. I don't want to appear captious, but there is absolutely no evidence at all of that kind.

MR. PALMER: Gentlemen, you will bear me out when I say there is evidence, and that this is it. Now, if I am wrong about it, all right. That is the evidence there. I say to you the girls swore nobody ever did visit them in their rooms. I say to you the girls all swore to that. I say to you, nobody testified that anybody ever did visit them in their rooms. But the contracts, written and prepared by these defendants show that they did, and they wanted to protect themselves from that thing, and put it into these contracts. That is what the evidence in this case shows, absolutely; it shows it.

The testimony of the People's witnesses was to the effect that the girls never received any persons in their rooms where they lived at the Hotel Virginia at Calxico, and, further, the testimony showed that they were instructed not to permit any male callers to their rooms at any time; and the fact of the District Attorney's statement, in the presence of the jury, that the girls had received male callers in their rooms, led the jury to convict the defendant by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause.

XXVII

The Court erred, as a matter of law, in denying the defendant's motion for a new trial, to which ruling the exception of the defendant was duly taken and allowed.

XXVIII

The Court erred, as a matter of law, in denying the defendant's Motion in Arrest of Judgment, to which

ruling the exception of the defendant was duly taken and allowed.

Earl Rogers
Chas Scholz
Milton M Cohen

Attorneys for Defendant.

And, upon the foregoing Assignment of Errors and upon the record in said cause, the defendant prays that the verdict and judgment rendered therein may be reversed.

Dated this — day of June, 1917.

Earl Rogers
Chas Scholz
Milton M. Cohen

Attorneys for Defendant.

We hereby certify that the foregoing Assignment of Errors are made in behalf of the petitioner, for Writ of Error, and are, in our opinion, and the same now constitute the assignment of errors upon the Writ prayed for.

Earl Rogers
Chas Scholz
Milton M. Cohen

Attorneys for Defendant.

[Endorsed]: Original. No. 1176 Crim. U. S. District Court, in and for the Southern District of California, Southern Division, United States of America, Plaintiff, vs. Warren Fabian, Dan Malone and Frank Beyer, Defendants. Assignment of Errors. (Frank Beyer.) Received copy of the within this 19 day of June, 1917. W. F. Palmer, Asst. U. S. Atty. Filed Jun 19, 1917. Wm. M. Van Dyke, clerk; by Geo. W. Fenimore, deputy clerk. Earl Rogers, Charles

Scholz & Milton M. Cohen, 403 California Building.
Phone Broadway 2626, Los Angeles, Cal., Attorneys
for Defendants.

*In the District Court of the United States for the
Southern District of California Southern Division*

UNITED STATES OF AMERICA,

Plaintiff,

v.

WARREN FABIAN, DAN MALONE, and FRANK
BEYER,

Defendants.

No. 1176, Criminal

ORDER ALLOWING WRIT OF ERROR.

Upon motion of Earl Rogers, Charles Scholz and Milton M. Cohen, Esqs., attorneys for the defendant Frank Beyer, and upon filing the petition for a Writ of Error and Assignment of Errors, it is

ORDERED, that a Writ of Error be and hereby is, allowed, to have reviewed, in the United States Circuit Court of Appeals for the Ninth Circuit, the verdict and judgment heretofore made and entered herein; that, pending the decision upon said Writ of Error, the supersedeas prayed for by the defendant, in his petition for writ of error herein, is hereby allowed, and the defendant Frank Beyer be admitted to bail upon said writ of error in the sum of Two Thousand Dollars.

Dated this 19th day of June, 1917, at Los Angeles, California.

Oscar A Trippet,
Judge of the District Court.

[Endorsed]: No. 1176, Crim. IN THE United States District Court, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA Southern Division UNITED STATES OF AMERICA Plaintiff vs. WARREN FABIAN, DAN MALONE and FRANK BEYER, Defendants. ORDER ALLOWING WRIT OF ERROR. FILED JUN 19 1917 WM. M. VAN DYKE, Clerk By Geo. W. Fenimore Deputy Clerk Received copy of the within order this 19 day of June 1917. W. F. Palmer, Asst. U. S. Atty. EARL ROGERS Charles Scholz & Milton M. Cohen, 403 CALIFORNIA BUILDING Phone Broadway 2626 Los Angeles, Cal. Attorneys for defendant Frank Beyer,

In the United States Circuit Court of Appeals for the Ninth Circuit.

F. B. BEYER,

Plaintiff in Error

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**ORDER EXTENDING TIME TO PRESENT
AND FILE BILL OF EXCEPTIONS.**

Good cause appearing therefor, IT IS HEREBY ORDERED, that the time within which the Plaintiff in Error in the above entitled cause may present and file the Bill of Exceptions in the United States Circuit Court of Appeals for the Ninth Circuit, be and

the same hereby is extended to and including the 17th day of July, 1917.

Dated at Los Angeles, California, July 9th, 1917.

Trippet

United States District Judge.

OK.

Schoonover

[Endorsed]: No. 1176. Criminal. In the United States Circuit Court in and for the Southern District of California, Southern Division, United States of America, Defendant, vs. F. B. Beyer, plaintiff. Order. Received copy of the within order this 7th day of July, 1917. Albert J. Schoonover. Filed Jul. 9 1917 at 40 min. past 4 o'clock P. M. Wm. M. Van Dyke, Clerk Murray C. White, Deputy. Earl Rogers, 403 California Building. Phone Broadway 2626, Los Angeles, Cal.

*In the District Court of the United States for the
Southern District of California Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff

v

FRANK BEYER,

Defendant.

**ORDER EXTENDING TIME TO PRESENT
AND FILE PROPOSED BILL OF EXCEP-
TIONS.**

Good cause appearing therefor, IT IS HEREBY ORDERED, That the time within which the defendant in the above entitled cause may present and file his

proposed Bill of Exceptions in the above Court, be and the same hereby is extended to and including the 15th day of August, 1917.

Dated at Los Angeles, California, July 18th, 1917.

Trippet

United States District Judge.

[Endorsed]: No. 1176 IN THE United States District Court IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA Southern Division United States of America Plaintiff vs. Frank Beyer, et al. Defendant Order FILED JUL 18 1917 at 5 min. past 3 o'clock P. M. Wm. M. VAN DYKE, Clerk Geo. W. Fenimore. EARL ROGERS and Milton M. Cohen- 403 CALIFORNIA BUILDING PHONE BROADWAY 2626 LOS ANGELES, CAL. Attorneys for defendant.

In the District Court of the United States for the Southern District of California Southern Division

UNITED STATES OF AMERICA,

Plaintiff

v.

FRANK BEYER,

Defendant.

ORDER EXTENDING TIME.

Good cause appearing it is hereby ordered that the defendant, Frank Beyer, have to and including the 10th day of September 1917 in which to present and file his proposed bill of exceptions in the above case.

Dated at Los Angeles, California, this 13th day of August, 1917.

Bledsoe

U. S. District Judge.

The above order is stipulated to by

Robert O'Connor

Asst U. S. District Attorney.

So Ordered

Bledsoe Judge.

8/13/17

[Endorsed]: Original No. 1176 IN THE United States District Court IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA Southern Division United States of America Plaintiff vs. Frank Beyer Defendant Order Extending Time FILED AUG 13 1917 at — min. past — o'clock — m. Wm. M. VAN DYKE, Clerk T F Green Deputy EARL ROGERS and Milton M. Cohen 403 CALIFORNIA BUILDING PHONE BROADWAY 2626 LOS ANGELES, CAL. Attorneys for Defendant.

In the District Court of the United States for the Southern District of California Southern Division.

UNITED STATES OF AMERICA,

Plaintiff,

v.

WARREN FABIAN, DAN MALONE,
and FRANK BEYER,

Defendants.

No. 1176, Crim.

PRECIPE.

TO THE CLERK OF THE SAID COURT, SIR:

Please issue a certified transcript of the following

matters and documents or copies thereof, including endorsements, upon Writ of Error, to the United States District Court for the Southern District of California, Southern Division, towit:

1. Indictment,
2. Arraignment and plea of defendant,
3. Demurrer,
4. Order overruling demurrer,
5. Minutes of trial,
6. Verdict (recorded)
7. Verdict (filed)
8. Orders denying motions for a new trial and in arrest of judgment, and minutes and orders of proceedings had on June 18, 1917.
9. Sentence and judgment of the Court,
10. Petition for Writ of Error,
11. Assignment of Errors,
12. Order allowing Writ of Error,
13. Supersedeas bond of defendant.
14. Writ of Error.
15. Citation to the United States of America on Writ of Error.
16. Certificate of Clerk of the United States District Court to Record.
17. Bill of Exceptions.
18. Precipe.
19. Stipulations extending time to file bill of exceptions.

Earl Rogers and
Milton M Cohen
Attorneys for Defendant.

[Endorsed]: No. 1176, Crim. In the United States District Court, in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. Warren Fabian, Dan Malone and Frank Beyer, Defendant. Precipe (Frank Beyer). Received copy of the within this 5th day of Dec., 1917. W. F. Palmer, Asst. U. S. Atty. Filed Dec. 5, 1917, at 5 min. past 4 o'clock P. M. Wm. M. Van Dyke, clerk; Murray C. White, deputy. Earl Rogers, Charles Scholz & Milton M. Cohen, 403 California Building, Phone Broadway 2626, Los Angeles, Cal., Attorneys for defendants.

*In the District Court of the United States for the
Southern District of California Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

v.

WARREN FABIAN, DAN MALONE, and FRANK
BEYER,

Defendants.

No. 1176, Crim.

**BOND PENDING DECISION UPON WRIT OF
ERROR.**

KNOW ALL MEN BY THESE PRESENTS, that we, Frank Beyer, of the County of Imperial, State of California, as principal, and The Aetna Casualty and Surety Company, as surety, are jointly and severally held and formally bound unto the United States of America, to the full and just sum of Two thousand (\$2000.00) dollars, to be paid to the said United States

of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 19th day of June, in the year of our Lord, nineteen hundred and seventeen.

Frank Beyer

Seal

(Seal) The Aetna Casualty and Surety Company
By Fred W Weitzel

Attorney in fact

WHEREAS lately, at a term of the District Court of the United States, Southern District of California, Southern Division, in a suit pending in said Court, between the United States of America, plaintiff, and Frank Beyer, defendant, a judgment and sentence were made, given and rendered against said Frank Beyer, and the said Frank Beyer having obtained a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a Citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, pursuant to the terms, and at the time fixed, in the said Citation, which said Citation has been duly served, and,

WHEREAS the said Frank Beyer has been admitted to bail, pending decision upon said Writ of Error, in the sum of Two thousand (\$2000.00) dollars.

NOW, THEREFORE, the condition of the above obligation is such, that, if the said Frank Beyer shall appear, either in person or by his attorney in the United States Circuit Court of Appeals for the Ninth Circuit, on such day, or days, as may be appointed for the hearing of said cause in the said Court, and prosecute his Writ of Error, and, if the said Frank Beyer, shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit; and, if the said Frank Beyer shall appear for trial in the District Court of the United States for the Southern District of California, Southern Division, on such day, or days, as may be appointed for the re-trial by said District Court, if the judgment and sentence against him be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, and, if the said Frank Beyer shall surrender himself in execution of the judgment and sentence aforesaid, if the said judgment and sentence against him be affirmed by the said Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; otherwise, to remain in full force, virtue and effect.

Frank Beyer

Principal

(Seal) The Aetna Casualty and Surety Company

By Fred W Weitzel

Attorney-in-fact

Surety.

Signed, sealed and acknowledged by the principal this 19th day of June, 1917.

Signed, sealed and acknowledged by the surety this 19 day of June, 1917.

[Endorsed]: Original No. 1176 Crim IN THE United States District Court IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA Southern Division UNITED STATES OF AMERICA, Plaintiff vs WARREN FABIAN, DAN MALONE and FRANK BEYER Defendants BOND PENDING DECISION UPON WRIT OF ERROR. (Frank Beyer) FILED JUL 19 1917 Wm M. VAN DYKE, Clerk By Geo. W. Fenimore Deputy Clerk EARL ROGERS Charles Scholz and Milton M. Cohen 403 CALIFORNIA BUILDING PHONE BROADWAY 2626 LOS ANGELES, CAL. Attorneys for defendants

